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July 29, 2013

ORIGINAL

Via Federal Express

Carlyn Winter Prisk
US EPA, Region 3
Mail Code 3HS62
1650 Arch St.
Philadelphia, PA 19103-2029

Re: Information Request
Lower Darby Creek Area Superfund Site
Operable Unit 1-Clearview Landfill
Darby Township, Delaware County and Philadelphia, PA

Dear Ms. Prisk:

Enclosed is ConAgra Foods, Inc.'s (ConAgra) response to the above-referenced Information Request.

We apologize that this was not submitted within 30 days of ConAgra's receipt of EPA's letter relating to this matter, dated February 14, 2013. This was not intentional by ConAgra and ConAgra is investigating so that it can take action to prevent any reoccurrence.

Please contact me if you have any questions on this matter.

Sincerely,

Steven P. Case

SPC:pb
Enclosure

Lower Darby Creek Area Superfund Site
Operable Unit 1 – Clearview Landfill
Darby Township, Delaware County and Philadelphia, Pennsylvania

ConAgra Foods, Inc.'s Response to the Information Request

General Responses and Objections

A. This response is submitted solely in connection with the Information Request served upon ConAgra Foods, Inc. (ConAgra), by letters dated February 14, 2013 and July 10, 2013. ConAgra objects to, and would oppose, any intended or actual use by EPA or other entity of the information provide herein for any other purpose.

B. Nothing herein shall constitute an admission of liability. Nothing herein shall constitute a waiver of any defense or rights. Nothing herein shall constitute a waiver of the attorney-client privilege or work product privilege or any other available privilege.

C. To the extent the Information Request seeks information that is overly broad, overly burdensome, speculative, vague, ambiguous or outside the EPA's authority under CERCLA 104(e), ConAgra believes such request goes beyond its reasonable obligations, and on that basis, objects to such request.

D. This response is the result of a reasonable and good faith investigation, including investigation into historical company documents and information, as well as based upon information currently available to ConAgra. ConAgra reserves the right to revise, amend and/or update this response in the future, if ConAgra obtains additional relevant or responsive information.

E. ConAgra's investigation included outside sources, including Wikipedia and Funding Universe. Thus, ConAgra makes no representation as to the accuracy of information provided from these outside sources.

F. ConAgra acquired GoodMark Foods, Inc. in 1998. See Response to Information Request No. 1 below. This acquisition is 15 years prior to the Information Request. ConAgra has not produced Slim Jims in the Philadelphia area since 2007. See Response to Information Request No. 2 below. The Information Request is focused primarily on matters between 1958 and 1976, which is approximately 50 years or more prior to the Information Request. Each of these have impacted information that ConAgra has been able to obtain to respond to this Information Request.

Subject to, and without waiver or limitation of any of the foregoing or other potentially available objection, ConAgra responds to the Information Request as follows:

Information Request

1. Describe Conagra's corporate history in detail. Your answer should include specific information on any mergers and acquisitions, name changes, asset purchases/sales etc., involving Conagra and GMF and include complete copies of all relevant documents.

Response:

ConAgra is one of North America's largest packaged food companies. ConAgra is publicly traded. Enclosed is a Company Fact Sheet for ConAgra. Information on ConAgra's corporate history is available on the company's website which is www.conagrafoods.com (see in particular the "Company History Timeline" under the "Our Company" section, which provides an excellent review of the company's history). Information on the company's history is also available through the ConAgra's SEC filings, which are publicly available on the SEC website.

In 1998, ConAgra acquired GoodMark Foods, Inc. ("GoodMark"). The acquisition was via a merger of CAG 40, Inc., which was a wholly owned subsidiary of ConAgra, into GoodMark. Enclosed is a copy of the Agreement and Plan of Merger dated June 17, 1998, and also enclosed is a copy of the Articles of Merger dated July 31, 1998. GoodMark merged into ConAgra in 2002. Enclosed is a Certificate of Merger, which was filed on December 23, 2002 with the Delaware Secretary of State.

2. Does Conagra currently conduct any business in the Philadelphia area?

Response:

ConAgra does not currently have business facilities in the Philadelphia area. ConAgra does currently sell its food products to grocery stores, food distributors and others, in the Philadelphia area.

ConAgra did produce Slim Jims at a facility located in Folcroft, Pennsylvania, which is in the Philadelphia area, for some period of time. Production at this facility was discontinued in or about 2007, and production was moved to a facility outside of Pennsylvania. ConAgra sold the Folcroft, Pennsylvania facility in 2007.

3. Describe the operations GMF or any party which manufactured Slim Jims in the Philadelphia area between 1958 and 1976.

Response:

ConAgra believes that Slim Jims may have been manufactured in the Philadelphia area for some period of time between 1958 and 1976 by the following: Adolph Levis and/or Cherry-Levis Co., and; General Mills. The products that may have been manufactured

would have been meat stick snacks under the Slim Jim label, and may have included other snack food products.

4. Identify all persons currently or formerly employed by Conagra who have or may have personal knowledge of the operations and waste disposal practices of GMF or any other entity that manufactured Slim Jims in the Philadelphia area between 1958 and 1976. For each such person, state that person's job title, dates of employment, current address, and telephone number. If the current telephone number or address is not available, provide the last known telephone number or last known address of such person.

Response:

ConAgra is not aware of any current or former employees who may have personal knowledge of the operations or waste disposal practices of GoodMark or any other entity that may have manufactured Slim Jims in the Philadelphia area for some period of time between 1958 and 1976.

5. Identify every hazardous substance used, generated, purchased, stored, or otherwise handled at any Slim Jim facility in the Philadelphia area between 1958 and 1976. With respect to each such hazardous substance, further identify:
 - a. The process(es) in which each hazardous substance was used, generated, purchased, stored, or otherwise handled at any Slim Jim facility in the Philadelphia area;
 - b. The chemical composition, characteristics, and physical state (solid, liquid, or gas) of each such hazardous substance;
 - c. The annual quantity of each such hazardous substance used, generated, purchased, stored, or otherwise handled at any Slim Jim facility in the Philadelphia area;
 - d. The beginning and ending dates of the period(s) during which such hazardous substance was used, generated, purchased, stored, or otherwise handled at any Slim Jim facility in the Philadelphia area;
 - e. The types and sizes of containers in which these substances were transported and stored; and
 - f. The persons or companies that supplied each such hazardous substance to any Slim Jim facility in the Philadelphia area.

Response:

ConAgra is not aware of any hazardous substance that may have been used, generated, purchased, stored or otherwise handled at any Slim Jim facility in the Philadelphia area for some period of time between 1958 and 1976.

6. Identify all by-products and wastes generated, stored, transported, treated, disposed or, released, or otherwise handled at any Slim Jim facility in the Philadelphia area between 1958 and 1976. With respect to each such by-product and waste identified, further identify:
 - a. The process(es) in which each such by-product and waste was generated, stored, transported, treated, disposed of, released, or otherwise handled at any Slim Jim facility in the Philadelphia area;
 - b. The chemical composition, characteristics, and physical state (solid, liquid, or gas) of each such by-product or waste;
 - c. The annual quantity of each such by-product and waste generated, stored, transported, treated, disposed or, released, or otherwise handled at any Slim Jim facility in the Philadelphia area;
 - d. The types, sizes and numbers of containers used to treat, store, or dispose each such by-product or waste; and
 - e. The name of the individual(s) and/or company(ies) that disposed of or treated each such by-product or waste; and
 - f. The location and method of treatment and/or disposed of each such by-product or waste.

Response:

ConAgra believes that any byproducts or waste that may have been generated, etc. from any Slim Jim facility in the Philadelphia area for some period of time between 1958 and 1976 would have been food ingredients, packaging materials or other materials relating to the manufacture of Slim Jims or other snack food products. Slim Jims are safe and wholesome food products, the production of which would be under the jurisdiction of United States Department of Agriculture, Food Safety and Inspection Service (USDA-FSIS), and any other snack food products produced at the facility would be subject to the jurisdiction of USDA-FSIS and/or the Food and Drug Administration.

7. Did GMF or any other company that manufactured Slim Jims in the Philadelphia area ever contract with, or make arrangement with any of the following companies: Clearview Land Development Company, the Clearview Landfill, Heller's Dump, Richard or Edward Heller, Eastern Industrial Corporation, Tri-County Hauling, Patrick Bizzari

Hauling, "Charles Crumbley," Ace Service Corp./Ace Dump Truck, Edward Lawrenson, Inc., "Quickway," "Nu Way," "Bernie's Hauling," William Adams and Sons, "Al Gonnelli," Schiavo Brothers, Inc., "Maritime," Dorner Trash, Harway, Inc./William Harmon, Inc., Northeast Disposal, Donald Vile, Inc., Disposal Corporation of American, "White Glove Trash," or any other company or municipality to remove or transport material from any Slim Jim facility in the Philadelphia area for disposal between 1958 and 1976? If so, for each transaction identified above, please identify:

- a. The person with whom GMF or any other company that manufactured Slim Jim's in the Philadelphia area made such a contract or arrangement;
- b. The date(s) on which or time period during which such material was removed or transported for disposal;
- c. The nature of such material, including the chemical content, characteristics, and physical state (i.e., liquid, solid, or gas);
- d. The annual quantity (number of loads, gallons, drums) of such material;
- e. The manner in which such material was containerized for shipment or disposal;
- f. The location to which such material was transported for disposal;
- g. The person(s) who selected the location to which such material was transported for disposal;
- h. The individuals employed with any transporter identified (including truck drivers, dispatchers, managers, etc.) with whom GMF or any other company that manufactured Slim Jim's in the Philadelphia area dealt concerning removal or transportation of such material; and
- i. Any billing information and documents (invoices, trip tickets, manifests, etc.) in Conagra's possession regarding arrangements made to remove to transport such material.

Response:

ConAgra is not aware of GoodMark or any other company, that may have manufactured Slim Jims in the Philadelphia area, contracting for disposal, for some period of time between 1958 and 1976, with any of the companies or entities described above.

8. Identify individuals employed by GMF or any other company that manufactured Slim Jims in the Philadelphia area or currently employed by Conagra who were responsible for arranging for the removal and disposal of wastes, and individuals who were responsible for payments, payment approvals, and record keeping concerning such waste removal transactions at Slim Jim facilities in the Philadelphia area between 1958 and 1976.

Provide current or last known addresses and telephone number where they may be reached. If these individuals are the same person identified by your answers to Question 4, so indicate.

Response:

ConAgra is not aware of any individuals or employees as described above.

9. For every instance in which GMF or any other company that manufactured Slim Jims in the Philadelphia area disposed of or treated material at Clearview or other areas of the Site, or arranged for disposal or treatment of material at the Site, identify:
- a. The date(s) on which such material was disposed of or treated at the Site;
 - b. The nature of such material, including the chemical content, characteristics, and physical state (i.e. liquid, solid or gas);
 - c. The annual quantity (number of loads, gallons, drums) of such material;
 - d. The specific location on the Site where such material was disposed of or treated; and
 - e. Any billing information and documents (invoices, trip tickets, manifests, etc.) in Conagra's possession regarding arrangements made to dispose of or treat such material at the Site.

Response:

ConAgra does not have information concerning disposals, if any, as described above.

10. Did GMF or any other company that manufactured Slim Jims in the Philadelphia area ever spill or cause a release of any chemical, hazardous substances, and/or hazardous waste, and/or non-hazardous solid waste at Clearview? If so, identify the following:
- a. The date(s) the spill(s)/release occurred;
 - b. The composition (i.e., chemical analysis) of the materials which were spilled/released;
 - c. The response made by GMF or any other company that manufactured Slim Jims in the Philadelphia area or on its behalf with respect to the spill(s)/release(s); and
 - d. The packaging, transportation, final disposition of the materials which were spilled/released.

Response:

ConAgra does not have information concerning spills or releases, if any, as described above.

11. Did GMF or any other company that manufactured Slim Jims in the Philadelphia area ever conduct any environmental assessments or investigations relating to contamination at Clearview? If so, please provide all documents pertaining to such assessments or investigations.

Response:

ConAgra is not aware of environmental assessments or investigations, if any, as described above.

12. If you have any information about other parties who may have information which may assist the EPA in its investigation of Clearview, or who may be responsible for the generation of, transportation of, or release of contamination at Clearview, please provide such information. The information you provide in response to this request should include the party's name, address, telephone number, type of business, and the reasons why you believe the party may have contributed to the contamination at the Site or may have information regarding the Site.

Response:

Ron Doggett may have information which may assist EPA in its investigation of Clearview. Mr. Doggett was employed by General Mills when the Slim Jim business was acquired by General Mills in or about 1967, and Mr. Doggett was involved with the Slim Jim business while it was owned by General Mills. Mr. Doggett, along with others, acquired the Slim Jim business when it was sold by General Mills in or about 1982. Mr. Doggett was chairman and CEO of GoodMark when GoodMark was acquired by ConAgra. Business contact information for Mr. Doggett is listed in Section 9.4 of the 1998 Agreement and Plan of Merger, a copy of which is enclosed and is referenced in the Response to Request No. 1; provided, however, ConAgra does not know whether such contact information is still current.

13. Identify the person(s) answering these questions on your behalf, including full name, mailing address, business telephone number, and relationship to the company.

Response:

Chris Aupperle, Attorney
ConAgra Foods, Inc.
One ConAgra Drive
Omaha, NE 68102
Telephone: 402-240-7068

14. Provide the name, title, current address, and telephone number of the individual representing Conagra to whom future correspondence or telephone calls should be directed.

Response:

Steven P. Case, Attorney
McGrath North Mullin Kratz, PC, LLO
First National Tower, Suite 3700
1601 Dodge Street
Omaha, NE 68102
Telephone: 402-341-3070
Email: scase@mcgrathnorth.com

15. If any of the documents solicited in this information request are no longer available, please indicate the reason why they are no longer available. If the records were destroyed, provide us with the following:
- a. Your document retention policy;
 - b. A description of how the records were/are destroyed (burned, archived, trashed, etc.) and the approximate date of the destruction;
 - c. A description of the type of information that would have been contained in the documents; and
 - d. The name, job title, and most current address known to you of the person(s) who would have produced these documents; the person(s) who would have been responsible for the retention of these documents; and the person(s) who would have been responsible for the destruction of these documents.

Response:

ConAgra is still reviewing this Information Request, and will provide a response as soon as reasonably possible, and no later than August 26, 2013.

Company fact sheet

ConAgra Foods is a progressive, value-added food company focused on delivering sustainable, profitable growth.

- ConAgra Foods, Inc., (NYSE: CAG) is one of North America's largest packaged food companies. Its balanced portfolio includes consumer brands found in 97 percent of America's households, the largest private brand packaged food business in North America, and a strong commercial and foodservice business.
- The company is a Fortune 500 company with net sales totaling approximately \$18 billion while employing more than 36,000 people.
- Consumers can find recognized brands such as Banquet®, Chef Boyardee®, Egg Beaters®, Healthy Choice®, Hebrew National®, Hunt's®, Marie Callender's®, Orville Redenbacher's®, PAM®, Peter Pan®, Reddi-wip®, Slim Jim®, Snack Pack® and many other ConAgra Foods brands, plus food sold under private brand labels, in grocery, convenience, mass merchandise, club and drug stores.
- The company's world headquarters is located in Omaha, Nebraska.
- The company started in 1919 as Nebraska Consolidated Mills. In 1971, it was named ConAgra, Inc. and became ConAgra Foods in 2000.
- ConAgra Foods reports its operations in two segments: Consumer Foods and Commercial Foods.
- The Consumer Foods segment makes and sells leading branded, private-label and customized food to retail and foodservice channels, principally in North America.
- The Commercial Foods segment supplies frozen potato and sweet potato products as well as other vegetable, spice, bakery and grain products to a variety of well-known restaurants, foodservice operators and commercial customers.
- 28 consumer brands are No. 1 or No. 2 in their category.
- 20 consumer brands generate more than \$100 million in retail sales each year.
- For nearly 20 years, ConAgra Foods has led the charge against child hunger in America with donations of more than \$50 million and 290 million pounds of food. In 2013, 19 ConAgra Foods brands participated

in Child Hunger Ends Here, the company's largest cause marketing campaign to date.

- In 2012, for the second consecutive year, ConAgra Foods achieved its listing on the Dow Jones Sustainability Index North America, one of the world's most recognizable citizenship indexes.
- In 2012, we reduced our carbon footprint by 43,600 metric tonnes, reduced landfill waste by 104,268 tons, conserved 295 million gallons of water and generated \$28.3 million of cost savings through projects such as reducing Banquet® chicken packaging materials by 1.8 million pounds annually, and more efficient packaging leads to more efficient truck utilization – 79,200 gallon of diesel fuel were conserved.

State of North Carolina
Department of the Secretary of State

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ARTICLES OF MERGER
BUSINESS CORPORATION

Pursuant to §55-11-05 of the General Statutes of North Carolina, the undersigned corporation does hereby submit the following Articles of Merger as the surviving corporation in a merger between two domestic business corporations.

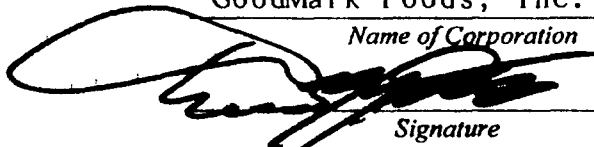
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SECRETARY OF STATE
NORTH CAROLINA

1. The name of the surviving corporation is GoodMark Foods, Inc.,
a corporation organized under the laws of North Carolina; the name of the merged corporation is
CAG 40, Inc., a corporation organized under the laws of
North Carolina.
2. Attached is a copy of the Plan of Merger that was duly approved in the manner prescribed by law by each of the corporations participating in the merger.
3. With respect to the surviving corporation (check either a or b, as applicable):
 - a. ☐ Shareholder approval was not required for the merger.
 - b. ☒ Shareholder approval was required for the merger, and the plan of merger was approved by the shareholders as required by Chapter 55 of the North Carolina General Statutes.
4. With respect to the merged corporation (check either a or b, as applicable):
 - a. ☐ Shareholder approval was not required for the merger.
 - b. ☒ Shareholder approval was required for the merger, and the plan of merger was approved by the shareholders as required by Chapter 55 of the North Carolina General Statutes.
5. See attached.
6. These articles will be effective upon filing, ~~unless delayed by a court order or other legal action~~

This is the 31 day of July, 19 98

GoodMark Foods, Inc.

Name of Corporation



Signature

RON E. DOGETT CHAIRMAN & CEO

Type or Print Name and Title

NOTES:

1. Filing fee is \$50. This document and one exact or conformed copy of these articles must be filed with the Secretary of State.
2. Certificate(s) of Merger must be registered pursuant to the requirements of N.C.G.S. Section 47-18.1

(Revised May 1998)

CORPORATIONS DIVISION

300N. SALISBURY STREET

(Form B-04)

RALEIGH, NC 27603-5909

5. **In accordance with Chapter 55, Section 11-01(c), of the North Carolina General Statutes, the Plan of Merger sets forth amendments to the Articles of Incorporation of the surviving corporation.**

**PLAN OF MERGER BETWEEN GOODMARK FOODS, INC.
AND
CAG 40, INC.**

Agreement and Plan of Merger, dated as of June 17, 1998, by and among ConAgra, Inc., CAG 40, Inc. (a wholly-owned subsidiary of ConAgra, Inc.) and GoodMark Foods, Inc. (the "Agreement") approved by the directors and shareholders of CAG 40, Inc. and GoodMark Foods, Inc.:

1. CAG 40, Inc. shall, pursuant to the provisions of Chapter 55 of the North Carolina General Statutes, known as the North Carolina Business Corporation Act ("NCBCA"), be merged with and into GoodMark Foods, Inc., which shall be the surviving corporation at the effective time and date of the merger and which is sometimes hereinafter referred to as the "surviving corporation", and which shall continue to exist as the surviving corporation under the name GoodMark Foods, Inc., as described in paragraph 2 below, pursuant to the provisions of the NCBCA. The separate existence of CAG 40, Inc., which is sometimes hereinafter referred to as the "merged corporation", shall cease at the effective time and date of the merger in accordance with the provisions of the NCBCA.

2. The Articles of Incorporation of the merged corporation at the effective time and date of the merger shall be the Articles of Incorporation of the surviving corporation except that Article I of the Articles of Incorporation of the merged corporation relating to the name of the corporation is hereby amended so as to read as follows at the effective time and date of the merger:

"FIRST: The corporate name for the corporation (hereinafter called the "corporation") is

GoodMark Foods, Inc."

and such Articles of Incorporation, as herein amended, shall continue in full force and effect until further amended, in the manner prescribed by the provisions of the NCBCA.

3. The bylaws of the merged corporation at the effective time and date of the merger will be the bylaws of the surviving corporation and will continue in full force and effect until changed, altered, or amended as therein provided and in the manner prescribed by the provisions of the NCBCA.

4. The directors and officers in office of the merged corporation at the effective time and date of the merger shall be the members of the board of directors and the officers of the surviving corporation, all of whom shall hold their directorships and offices from the effective time and date of the merger until their respective successors are duly elected or appointed and

qualified in the manner provided in the Articles of Incorporation or bylaws of the surviving corporation or as otherwise provided by law.

5. The shares of common stock of the surviving corporation issued and outstanding immediately prior to the effective time and date of the merger will be converted into the right to receive ConAgra, Inc. common stock as described in the Agreement. The manner and basis for converting the shares of capital stock of the surviving corporation into or for shares of ConAgra, Inc. shall be as follows:

(a) ConAgra, Inc. Common Stock. Each share of surviving corporation common stock issued and outstanding immediately prior to the effective time and date of the merger (other than shares to be cancelled pursuant to Section 5(c) below and shares which are held by shareholders exercising dissenters' rights under Article 13 of the NCBCA) shall be converted into the right to receive 1.08108 validly issued, fully paid and nonassessable shares of ConAgra, Inc. common stock.

(b) Merged Corporation Common Stock. Each share of common stock of the merged corporation issued and outstanding immediately prior to the effective time and date of the merger shall be converted into one share of common stock of the surviving corporation.

(c) Treasury Stock. All the surviving corporation common stock owned by the surviving corporation as treasury stock, if any, and any surviving corporation common stock that is owned by ConAgra, Inc. or the merged corporation shall automatically be cancelled and retired and shall cease to exist and no consideration shall be delivered or deliverable in exchange therefor.

(d) Rights Subsequent to Merger. All shares of surviving corporation common stock converted pursuant to Section 5(a) above shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist and each holder of a certificate which immediately prior to the effective time represented such outstanding shares shall cease to have any rights as shareholders of surviving corporation, except the right to receive the consideration set forth in Section 5(a) above for each such share.

(e) Fractional Shares. No certificates or scrip representing fractional shares of ConAgra, Inc. common stock shall be issued in connection with the merger, no dividend or distribution with respect to shares shall be payable on or with respect to any fractional share and such fractional share interests shall not entitle the owner thereof to vote or to any other rights of a stockholder of ConAgra, Inc. Any such fractional share interest to which any shareholder of surviving corporation would otherwise be entitled shall be rounded to the nearest whole share.

(f) Each outstanding share of surviving corporation common stock as to which a written notice of intent to demand payment is furnished in accordance with Section 55-13-21 of the NCBCA at or prior to the surviving corporation shareholder meeting, as described in Section 6.5(a) of the Agreement, and not withdrawn at or prior to such surviving corporation

shareholder meeting and which is not voted in favor of the merger shall not be converted into or represent a right to receive the merger consideration pursuant to Section 5(a) above unless and until the holder thereof shall have failed to perfect, or shall have effectively withdrawn or lost the right to payment for each such share of surviving corporation common stock under Section 55-13-21, at which time each such share shall be converted into the right to receive the merger consideration pursuant to Section 5(a) above.

(g) Options. Options to purchase shares of surviving corporation common stock (collectively, "Options") granted by the surviving corporation under the surviving corporation's 1985 Non-Qualified Stock Option Plan, as amended and restated on March 23, 1998, or Restricted Stock Award Plan, dated October 15, 1985, that remain outstanding immediately prior to the effective time and date of the merger, whether or not then exercisable, shall, by virtue of the merger and without any action on the part of the holder thereof, be assumed by ConAgra, Inc. and converted so as to entitle the holder thereof to subscribe to, purchase or acquire from ConAgra, Inc. the number of shares of ConAgra, Inc. common stock which equals the product of 1.08108 times the number of shares of the surviving corporation common stock subject to the Options immediately prior to the effective time and date of the merger (rounded to the nearest whole share), at an exercise price per share of ConAgra, Inc. common stock equal to the exercise price per share of the surviving corporation common stock then specified with respect to such Option divided by 1.08108 (rounded to the nearest whole cent).

ANNEX A

AGREEMENT AND PLAN OF MERGER

among

CONAGRA, INC.,

CAG 40, INC.

and

GOODMARK FOODS, INC.

Dated as of June 17, 1998

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"accumulated funding deficiency" has the meaning specified in Section 3.17(a).

"Acquisition Transaction" has the meaning specified in Section 6.2(a).

"affiliate" has the meaning specified in Section 6.6.

"Agreement" shall mean this Agreement and Plan of Merger.

"Applicable Law" has the meaning specified in Section 3.6.

"Articles of Merger" has the meaning specified in Section 1.3.

"Average Trading Price" has the meaning specified in Section 2.1(a).

"Benefit Plans" has the meaning specified in Section 3.17(a).

"Certificates" has the meaning specified in Section 2.1(d).

"Class B Stock" has the meaning specified in Section 4.3(a).

"Class C Stock" has the meaning specified in Section 4.3(a).

"Class D Stock" has the meaning specified in Section 4.3(a).

"Class E Stock" has the meaning specified in Section 4.3(a).

"Closing" has the meaning specified in Section 1.2.

"Closing Date" has the meaning specified in Section 1.2.

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"Code" shall have the meaning set forth in the Recitals.

"Company" shall mean Goodmark Foods, Inc.

"Company 10-K" has the meaning specified in Section 3.12.

"Company's Assets" has the meaning specified in Section 3.18.

"Company Business Personnel" has the meaning specified in Section 3.19.

"Company Common Stock" has the meaning specified in Section 2.1(a).

"Company Disclosure Schedule" has the meaning specified in Article III.

"Company Material Adverse Effect" has the meaning specified in Section 3.1.

"Company Multiemployer Plan" has the meaning specified in Section 3.17(a).

"Company Permits" has the meaning specified in Section 3.6.

"Company Plan" has the meaning specified in Section 3.17(a)(i).

"Company Rule 145 Affiliates" has the meaning specified in Section 6.6.

"Company SEC Documents" has the meaning specified in Section 3.9(a).

"Company Shareholder Meeting" has the meaning specified in Section 6.5(a).

"Consent" has the meaning specified in Section 6.7(b).

"Contract" has the meaning specified in Section 3.7.

"Dissenting Shares" has the meaning specified in Section 2.6.

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"DOJ" has the meaning specified in Section 6.7(d).

"Effective Time" has the meaning specified in Section 1.3.

"ERISA" has the meaning specified in Section 3.17(a).

"Exchange Act" has the meaning specified in Section 3.8.

"Exchange Agent" has the meaning specified in Section 2.2(a).

"FTC" has the meaning specified in Section 6.7(d).

"GAAP" has the meaning specified in Section 3.9(a).

"Governmental Entity" has the meaning specified in Section 3.6.

"HSR Act" has the meaning specified in Section 3.8.

"Indemnified Parties" has the meaning specified in Section 6.9(a).

"IRS" has the meaning specified in Section 3.14.

"License Agreements" has the meaning specified in Section 3.15(b).

"Licensed Patent Agreements" has the meaning specified in Section 3.15(a)(ii).

"Licensed Trademark Agreements" has the meaning specified in Section 3.15(a)(iv).

"Liens" has the meaning specified in Section 3.4.

"Maximum Amount" has the meaning specified in Section 6.9(b).

"Meeting Date" has the meaning specified in Section 8.1(d).

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"Merger" shall have the meaning set forth in the Recitals.

"Merger Sub" shall mean CAG 40, Inc.

"Merger Sub Common Stock" has the meaning specified in Section 2.1(b).

"multiemployer plan" has the meaning specified in Section 3.17(a).

"NCBCA" shall have the meaning set forth in the Recitals.

"Option Plans" has the meaning specified in Section 2.7.

"Options" has the meaning specified in Section 2.7.

"Owned Patents" has the meaning specified in Section 3.15(a)(i).

"Owned Trademarks" has the meaning specified in Section 3.15(a)(iii).

"Parent" shall mean ConAgra, Inc.

"Parent Capital Stock" has the meaning specified in Section 4.3(a).

"Parent Common Stock" has the meaning specified in Section 2.1(a).

"Parent Disclosure Schedule" has the meaning specified in Article IV.

"Parent Material Adverse Effect" has the meaning specified in Section 4.1.

"Parent SEC Documents" has the meaning specified in Section 4.7.

"pension plan" has the meaning specified in Section 3.17(a)(i)(x).

"Per Share Merger Consideration" has the meaning specified in Section 2.1(a).

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"person" has the meaning specified in Section 9.5.

"Proxy Statement" has the meaning specified in Section 3.16.

"Registration Statement" has the meaning specified in Section 3.16.

"reportable event" has the meaning specified in Section 3.17(a).

"SEC" has the meaning specified in Section 3.9(a).

"Securities Act" has the meaning specified in Section 4.3(a).

"Shares" has the meaning specified in Section 2.1(a).

"Stock Voting Agreement" shall have the meaning set forth in the Recitals.

"Subsequent Company SEC Documents" has the meaning specified in Section 3.9(a).

"Subsequent Parent SEC Documents" has the meaning specified in Section 4.7.

"Subsidiary" has the meaning specified in Section 3.1.

"Superior Proposal" has the meaning specified in Section 6.2(b).

"Surviving Corporation" has the meaning specified in Section 1.1.

"Tax Returns" has the meaning specified in Section 3.14.

"Taxes" has the meaning specified in Section 3.14.

"welfare plan" has the meaning specified in Section 3.17(a).

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AGREEMENT AND PLAN OF MERGER

AGREEMENT AND PLAN OF MERGER, dated as of June 17, 1998 (this "Agreement"), by and among CONAGRA, INC., a Delaware corporation ("Parent"), CAG 40, INC., a North Carolina corporation and newly formed, wholly owned subsidiary of Parent (the "Merger Sub"), and GOODMARK FOODS, INC., a North Carolina corporation (the "Company").

RECITALS:

- (a) The Boards of Directors of the Parent and the Company have each approved and deem it advisable and in the best interests of their respective shareholders for Parent to acquire the Company upon the terms and subject to the conditions of this Agreement; and
- (b) It is intended that the transaction be accomplished

by a merger of Merger Sub with and into the Company, with the Company continuing as the surviving corporation (the "Merger"); and

- (c) As a condition and an inducement to Parent and Merger Sub entering into this Agreement and incurring the obligations set forth herein, concurrently with the execution and delivery of this Agreement, Parent is entering into a Stock Voting Agreement with shareholders of the Company, who own an aggregate of approximately 34% of the outstanding shares of Company Common Stock (as hereinafter defined), in the form of Exhibit "A" hereto (the "Stock Voting Agreement"); and
- (d) The Board of Directors of the Company has approved the transactions contemplated by this Agreement and the Stock Voting Agreement in accordance with the provisions of Section 55-11-01 of the Business Corporation Act of the State of North Carolina (the "NCBCA"), and has resolved, subject to the terms of this Agreement, to recommend the

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approval of the Merger by its shareholders in accordance with the provisions of Section 55-11-03 of the NCBCA; and

- (e) The Board of Directors of Merger Sub has unanimously approved the transactions contemplated by this Agreement and has unanimously resolved, subject to the terms of this Agreement, to recommend the approval of the Merger to Parent, its sole shareholder; and
- (f) The Board of Directors of Parent has approved the transactions contemplated hereby as sole shareholder of Merger Sub; and
- (g) The parties hereto intend that the Merger will qualify as a nontaxable reorganization under Section 368(a) of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations promulgated thereto, and that this Agreement shall be, and is hereby, adopted as a plan of reorganization for purposes of Section 368 of the Code; and
- (h) The parties intend that the transactions contemplated herein qualify for treatment as a pooling of interests pursuant to APB Opinion No. 16.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth herein, the parties hereto agree as follows:

ARTICLE I

THE MERGER

Section 1.1 The Merger. Upon the terms and subject to the conditions contained in this Agreement, and in accordance with the NCBCA, at the Effective Time (as hereinafter

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defined), Merger Sub shall be merged with and into the Company, the separate corporate existence of Merger Sub shall thereupon cease, and the Company shall continue as the surviving corporation (sometimes hereinafter referred to as the "Surviving Corporation") and shall continue its corporate existence under the laws of the State of North Carolina, and in accordance with Section 55-11-06 of the NCBCA, all of the rights, privileges, powers, immunities, purposes and franchises of Merger Sub and the Company shall vest in the Surviving Corporation and all of the debts, liabilities, obligations and duties of Merger Sub and the Company shall become the debts, liabilities, obligations and duties of the Surviving Corporation.

Section 1.2 Closing. Subject to the terms and conditions of this Agreement, the closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of McGrath, North, Mullin & Kratz, P.C., 222 South Fifteenth Street, One Central Park Plaza, Suite 1400, Omaha, Nebraska, at 10:00 a.m., local time, as promptly as practicable after all of the conditions set forth in Article VII are satisfied or waived or on such other date and at such other time and place as Parent and the Company shall agree (the date on which the Closing actually occurs being referred to herein as the "Closing Date").

Section 1.3 Effective Time. The Merger shall become effective at the time of filing of, or at such later time specified in, properly executed articles of merger (the "Articles of Merger"), in the form required by and executed in accordance with the NCBCA, filed with the Secretary of State of the State of North Carolina, in accordance with the provisions of Section 55-11-05 of the NCBCA. Such filing shall be made contemporaneously with, or immediately after, the Closing. When used in this Agreement, the term "Effective Time" shall mean the date and time at which the Merger shall become effective.

Section 1.4 Articles of Incorporation and By-Laws. From and after the Effective Time, the Articles of Incorporation of the Surviving Corporation shall be amended so that the Articles of Incorporation of Merger Sub as in effect immediately prior to the Effective Time shall be the Articles of Incorporation of the Surviving Corporation until thereafter amended in accordance with Applicable Law (as hereinafter defined), provided that such Articles of Incorporation shall be amended to reflect "GoodMark Foods, Inc." as the name of the Surviving Corporation. From and after the Effective Time, the By-Laws of Merger

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Sub in effect immediately prior to the Effective Time shall be the By-Laws of the Surviving Corporation until thereafter amended in accordance with Applicable Law.

Section 1.5 Directors and Officers. From and after the Effective Time, the directors of Merger Sub immediately prior to the Effective Time shall become the directors of the Surviving Corporation and shall hold office from the Effective Time until their respective successors are duly elected or appointed and qualified in the manner provided in the Articles of Incorporation or By-Laws of the Surviving Corporation or as otherwise provided by law. The officers of Merger Sub at the Effective Time shall become the officers of the Surviving Corporation and shall hold office from the Effective Time until their respective successors are duly elected or appointed and qualified in the manner provided in the Articles of Incorporation or By-Laws of the Surviving Corporation or as otherwise provided by law.

ARTICLE II

CONVERSION OF SHARES

Section 2.1 Conversion of Shares. At the Effective Time, by virtue of the Merger and without any action on the part of any holder of any shares of Company Common Stock (as defined herein) or any shares of capital stock of Merger Sub:

(a) Each share of Common Stock, par value \$.01 per share of the Company ("Company Common Stock" or "Shares") issued and outstanding immediately prior to the Effective Time (other than Shares to be cancelled pursuant to Section 2.1(c) hereof and Shares which are held by shareholders exercising dissenters' rights under Article 13 of the NCBCA) shall be converted into the right to receive that number rounded to five (5) decimal places of validly issued, fully paid and nonassessable shares of Common Stock, par value \$.01 per share of Parent ("Parent Common Stock"), determined by dividing \$30.00 by the "Average Trading Price" (the "Per Share Merger Consideration"). For purposes of this Agreement, "Average Trading Price" shall mean the average closing price of Parent Common Stock on the NYSE Composite Transactions List (as reprinted by The Wall Street Journal) for the ten (10) full trading days ending on the fifth (5th) full trading day

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immediately preceding the Closing Date, provided, however, in the event the Average Trading Price is greater than \$31.75, the Average Trading Price shall, for purposes of determining the Per Share Merger Consideration, be deemed to be \$31.75, and in the event the Average Trading Price is less than \$27.75, the Average Trading Price shall, for purposes of determining the Per Share Merger Consideration, be deemed to be \$27.75.

(b) Each share of common stock, par value \$1.00, of Merger Sub ("Merger Sub Common Stock") issued and outstanding immediately prior to the Effective Time shall be converted into one duly issued, validly authorized, fully paid and nonassessable share of common stock, par value \$1.00 per share, of the Surviving Corporation.

(c) All Shares that are owned by the Company as treasury stock and any Shares that are owned by Parent or Merger Sub shall automatically be cancelled and retired and shall cease to exist and no consideration shall be delivered or deliverable in exchange therefor.

(d) All Shares converted pursuant to Section 2.1(a) shall no longer be outstanding and shall automatically be cancelled and retired and shall cease to exist and each holder of a certificate which immediately prior to the Effective Time represented such outstanding shares (the "Certificates") shall cease to have any rights as shareholders of the Company, except the right to receive the consideration set forth in Section 2.1(a) for each such Share.

(e) If between the date of this Agreement and the Effective Time, the outstanding shares of Parent Common Stock shall have been changed into a different number of shares or a different class, by reason of any stock dividend, subdivision, reclassification, recapitalization, split, combination, exchange of shares or similar transaction or if Parent pays an extraordinary dividend or distribution, the number of shares of Parent Common Stock to be issued in the Merger shall be correspondingly adjusted to reflect such stock dividend, subdivision, reclassification, recapitalization, split, combination, exchange of shares or similar transaction or extraordinary dividend or distribution, upon surrender of the certificate formerly representing Shares in the manner provided in Section 2.2 hereof.

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Section 2.2 Exchange Procedures.

(a) Parent shall designate a bank or trust company to act as Exchange Agent hereunder (the "Exchange Agent"). Immediately following the Effective Time, Parent shall deliver, in trust, to the Exchange Agent, for the benefit of the holders of Shares, for exchange in accordance with this Article II through the Exchange Agent, certificates evidencing the shares of Parent Common Stock issuable pursuant to Section 2.1(a) in exchange for outstanding Shares.

(b) As soon as practicable after the Effective Time, Parent shall cause the Exchange Agent to mail to each holder of record of Certificates (i) a form of letter of transmittal (in customary form) specifying that delivery shall be effected, and risk of loss and title to the Certificates shall pass, only upon proper delivery of the Certificates to the Exchange Agent and (ii) instructions for use in surrendering such Certificates in exchange for the Per Share Merger Consideration. Upon surrender of a Certificate for cancellation to the Exchange Agent, together with such letter of transmittal, duly executed, the holder of such Certificate shall be entitled to receive in exchange therefor (A) that number of shares of Parent Common Stock equal to the product of the Per Share Merger Consideration multiplied by the number of Shares represented by the surrendered Certificate, and (B) any amounts to which the holder is entitled pursuant to Section 2.3 hereof after giving effect to any required tax withholdings and the Certificate so surrendered shall forthwith be cancelled. Until surrendered as contemplated by this Section 2.2(b), each Certificate (other than certificates representing shares to be cancelled pursuant to Section 2.1(c) hereof and Shares which are held by dissenters) shall be deemed from and after the Effective Time to represent only the right to receive upon such surrender the Per Share Merger Consideration. In no event shall the holder of any such surrendered Certificate be entitled to receive interest on any cash to be received in the Merger. Neither the Exchange Agent nor any party hereto shall be liable to a holder of Shares for any amount paid to a public official pursuant to any applicable abandoned property, escheat or similar law.

(c) If any Certificate shall have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming such Certificate to be lost, stolen or destroyed and, if required by Parent, the posting by such person of a bond, in such reasonable and customary amount as Parent may direct, as indemnity against any claim that

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may be made against it with respect to such Certificate, the Exchange Agent will issue in exchange for such lost, stolen or destroyed Certificate the Per Share Merger Consideration.

Section 2.3 Dividends; Transfer Taxes; Withholding. No dividends or

other distributions that are declared on or after the Effective Time on Parent Common Stock, or are payable to the holders of record thereof who became such on or after the Effective Time, shall be paid to any person entitled by reason of the Merger to receive certificates representing shares of Parent Common Stock, until such person shall have surrendered its Certificate(s) as provided in Section 2.2 hereof. Subject to applicable law, there shall be paid to each person receiving a certificate representing such shares of Parent Common Stock, at the time of such surrender or as promptly as practicable thereafter, the amount of any dividends or other distributions theretofore paid with respect to the shares of Parent Common Stock represented by such certificate and having a record date on or after the Effective Time but prior to such surrender and a payment date on or subsequent to such surrender. In no event shall the person entitled to receive such dividends or other distributions be entitled to receive interest on such dividends or other distributions. If any cash or certificate representing shares of Parent Common Stock is to be paid to or issued in a name other than that in which the Certificate surrendered in exchange therefor is registered, it shall be a condition of such exchange that the Certificate so surrendered shall be properly endorsed and otherwise in proper form for transfer and that the person requesting such exchange shall pay to the Exchange Agent any transfer or other taxes required by reason of the issuance of such certificate representing shares of Parent Common Stock and the distribution of such cash payment in a name other than that of the registered holder of the Certificate so surrendered, or shall establish to the satisfaction of the Exchange Agent that such tax has been paid or is not applicable. Parent or the Exchange Agent shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement to any holder of Company Common Stock such amounts as Parent or the Exchange Agent are required to deduct and withhold under the Code or any provision of state, local or foreign tax law, with respect to the making of such payment. To the extent that amounts are so withheld by Parent or the Exchange Agent, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the holder of the Company Common Stock in respect of whom such deduction and withholding were made by Parent or the Exchange Agent.

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Section 2.4 Fractional Shares. No certificates or scrip representing fractional shares of Parent Common Stock shall be issued upon the surrender for exchange of Certificates, no dividend or distribution with respect to shares shall be payable on or with respect to any fractional share and such fractional share interests shall not entitle the owner thereof to vote or to any other rights of a stockholder of Parent. Any such fractional share interest to which any shareholder of the Company would otherwise be entitled shall be rounded to the nearest whole share.

Section 2.5 Undistributed Parent Common Stock. Any portion of the certificates representing shares of Parent Common Stock issuable upon conversion of Company Common Stock pursuant to Section 2.1(a) hereof, together with any dividends or distributions payable in respect thereof pursuant to Section 2.3 hereof, which remains undistributed to the former holders of Company Common Stock for six months after the Effective Time shall be delivered to Parent, upon its request, and any such former holders who have not theretofore surrendered to the Exchange Agent their certificates in compliance with this Article II shall thereafter look only to Parent for payment of their claim for such shares of Parent Common Stock and any dividends or distributions with respect to such shares of Parent Common Stock (in each case, without interest thereon).

Section 2.6 Dissenting Shares. Each outstanding share of Company Common Stock as to which a written notice of intent to demand payment is furnished in accordance with Section 55-13-21 of the NCBCA at or prior to the Company Shareholder Meeting and which is not voted in favor of the Merger shall not be converted into or represent a right to receive the Per Share Merger Consideration unless and until the holder thereof shall have failed to perfect, or shall have effectively withdrawn or lost the right to payment for each such share of Company Common Stock under Section 55-13-21, at which time each such share shall be converted into the right to receive the Merger Consideration. All such shares of Company Common Stock as to which such a written demand for payment is so furnished and not withdrawn at or prior to the Company Shareholder Meeting and which are not voted in favor of the Merger, except any such shares of Company Common Stock the holder of which, prior to the Effective Time, shall have effectively withdrawn or lost such right to payment for such shares of Company Common Stock under Section 55-13-21, are herein referred to as "Dissenting Shares." The Company shall give Parent prompt notice upon receipt by the

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Company of any written demands for payment, withdrawal of such demands, and any other written communications delivered to the Company pursuant to Section

55-13-21, and the Company shall give Parent the opportunity, to the extent permitted by law, to participate in all negotiations and proceedings with respect to such demands. Except with the prior written consent of Parent, the Company shall not voluntarily make any payment with respect to any demands for payment and shall not settle or offer to settle any such demands. If the Merger is approved at the Company Shareholder Meeting, the Company shall send out written dissenters' notices pursuant to Section 55-13-22 of the NCBCA to all shareholders of the Company who satisfied the requirements of Section 55-13-21 of the NCBCA and, assuming the dissenting shareholder complies with Section 55-13-23 of the NCBCA, shall remit payment to the dissenting shareholders pursuant to, and shall otherwise comply with, Section 55-13-25 of the NCBCA.

Section 2.7 Options.

(a) Options to purchase Shares (collectively "Options") granted by the Company under the Company's 1985 Non-Qualified Stock Option Plan, as amended and restated on March 23, 1998, or Restricted Stock Award Plan, dated October 15, 1985, (collectively, the "Option Plans"), that remain outstanding immediately prior to the Effective Time, whether or not then exercisable, shall, by virtue of the Merger and without any action on the part of the holder thereof, be assumed by Parent and converted so as to entitle the holder thereof to subscribe to, purchase or acquire from Parent the number of shares of Parent Common Stock which equals the product of the Per Share Merger Consideration times the number of shares of Company Common Stock subject to the Options immediately prior to the Effective Time (rounded to the nearest whole share), at an exercise price per share of Parent Common Stock equal to the exercise price per share of Company Common Stock then specified with respect to such Option divided by the Per Share Merger Consideration (rounded to the nearest whole cent); provided, however, in the event of any Option Plan which is an incentive stock option as defined in Section 422 of the Code the aggregate adjusted exercise price of such Option and the number of shares to which such Option is exercisable shall be computed in compliance in all respects with the requirements of Section 424(a) of the Code, including the requirements that such adjustments not confer on the holder of any Option any additional benefits not currently provided under the Option Plans. Material terms and provisions of each Option as assumed and converted by Parent shall be

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at least as favorable to the holder thereof as the terms and conditions of the Option existing immediately prior to the Effective Time, except that there shall be substituted the appropriate number of shares of Parent Common Stock for Company Common Stock at the appropriate exercise prices described above, effective as of the Effective Time. As promptly as practicable after the Effective Time, Parent shall issue to each holder of an Option a written instrument evidencing its assumption by Parent.

(b) The Parent and the Company shall take all corporate action necessary to effectuate the assumption and conversion of the Options as set forth in subpart (a) above, and the Parent shall take all corporate actions necessary to reserve for issuance a sufficient number of shares of Parent Common Stock for delivery thereunder, assumed in accordance with this Section 1.9. Promptly after the Effective Time, the Parent shall file a Registration Statement on Form S-8 (or any successor form) under the Securities Act of 1933, as amended (the "Securities Act") with respect to all shares of Parent Common Stock subject to Options that may be registered on a Form S-8, and shall use commercially reasonable efforts to maintain the effectiveness of such Registration Statement for so long as such Options remain outstanding.

Section 2.8 Closing of Transfer Books. At the Effective Time, the stock transfer books of the Company shall be closed and no transfer of shares of Company Common Stock shall thereafter be made. If, after the Effective Time, Certificates are presented to Parent, they shall be cancelled and exchanged as provided in this Article II.

Section 2.9 Further Assurances. If, at any time after the Effective Time, Parent shall consider or be advised that any deeds, bills of sale, assignments, assurances or any other actions or things are necessary or desirable to vest, perfect or confirm of record or otherwise in the Surviving Corporation its right, title or interest in, to or under any of the rights, properties or assets of the Company acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the merger or otherwise to carry out this Agreement, the officers of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of the Company or otherwise, all such deeds, bills of sale, assignments and assurances and to take and do all such other actions and things as may be necessary or desirable to vest, perfect or confirm any and all right, title and interest in, to

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or under such rights, properties or assets in the Surviving Corporation or otherwise to carry out the purposes of this Agreement.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

The Company represents and warrants to Parent and Merger Sub as follows. Such representations and warranties are made subject to certain exceptions and qualifications set forth in the Company Disclosure Schedule dated as of the date hereof and delivered as a separate document and incorporated in this Agreement by reference (the "Company Disclosure Schedule"). The representation(s) and warranty(ies) to which each such exception or qualification relates is(are) specifically identified (by cross-reference or otherwise) in the Company Disclosure Schedule unless the applicability of such exception is apparent on its face.

Section 3.1 Organization and Good Standing. The Company is a corporation duly organized and validly existing under the laws of the State of North Carolina and has the corporate power and authority to carry on its business as it is now being conducted. The Company is duly qualified as a foreign corporation to do business, and is in good standing (to the extent such concept is recognized), in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified or in good standing would not have a material adverse effect, individually or in the aggregate, on the business, assets, liabilities, condition (financial or otherwise), prospects or results of operations of the Company and its Subsidiaries taken as a whole, or the ability of the Company to consummate the Merger and the other transactions contemplated by this Agreement (a "Company Material Adverse Effect"). As used in this Agreement, a "Subsidiary" of any person means another person owned directly or indirectly by such person by reason of such person owning or controlling an amount of the voting securities, other voting ownership or voting partnership interests of another person which is sufficient to elect at least a majority of its Board of Directors or other governing body of another person or, if there are no such voting interests, 50% or more of the equity interests of another person.

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Section 3.2 Articles of Incorporation and By-Laws. True, correct and complete copies of the Articles of Incorporation and By-laws or equivalent organizational documents, each as amended to date, of the Company and each of its Subsidiaries have been delivered to Parent. The Articles of Incorporation, By-laws and equivalent organizational documents of the Company and each of its Subsidiaries are in full force and effect. Neither the Company nor any of its Subsidiaries is in violation of any provision of its Articles of Incorporation, By-laws or equivalent organizational documents.

Section 3.3 Capitalization.

(a) The authorized capital stock of the Company consists of 20,000,000 shares of Common Stock \$0.01 par value. As of June 17, 1998, (i) 7,214,104 shares of Company Common Stock were issued and outstanding and no shares were held in the treasury of the Company, and (ii) 1,700,000 shares of Company Common Stock were reserved for issuance upon the exercise of outstanding Options. Since June 17, 1998, the Company has not issued any shares of capital stock, or any security convertible into or exchangeable for shares of such capital stock, including any Option, other than the issuance of shares of Company Common Stock upon the exercise of Options. All of the issued and outstanding Shares have been validly issued, and are fully paid and nonassessable, and are not subject to preemptive rights.

(b) Except as described in Section 3.3(a) hereof, and except as set forth in Section 3.3 of the Company Disclosure Schedule: (i) no shares of capital stock or other equity securities of the Company are authorized, issued or outstanding, or reserved for issuance, and there are no options, warrants or other rights (including registration rights), agreements, arrangements or commitments of any character to which the Company or any of its Subsidiaries is a party relating to the issued or unissued capital stock or other equity interests of the Company or any of its Subsidiaries, requiring the Company or any of its Subsidiaries to grant, issue or sell any shares of the capital stock or other equity interests of the Company or any of its Subsidiaries by sale, lease, license or otherwise; (ii) neither the Company nor its Subsidiaries has any obligation, contingent or otherwise, to repurchase, redeem or otherwise acquire any shares of the capital stock or other equity interests of the Company or its Subsidiaries; (iii) neither the Company nor any of its Subsidiaries, directly or indirectly, owns, or has agreed to purchase or otherwise acquire, the capital stock or other

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equity interests of, or any interest convertible into or exchangeable or exercisable for such capital stock or such equity interests, of any corporation, partnership, joint venture or other entity which would be material in value to the Company; and (iv) there are no voting trusts, proxies or other agreements or understandings to or by which the Company or any of its Subsidiaries is a party or is bound with respect to the voting of any shares of capital stock or other equity interests of the Company or any of its Subsidiaries.

Section 3.4 Company Subsidiaries. Section 3.4 of the Company Disclosure Schedule sets forth a list of each Subsidiary of the Company. Each Subsidiary of the Company is a corporation, partnership or other entity duly organized, validly existing and in good standing (to the extent such concept is recognized in such jurisdiction) under the laws of its jurisdiction of incorporation or organization. Each Subsidiary of the Company has the corporate power and authority to carry on its business as it is now being conducted. Each Subsidiary of the Company is duly qualified as a foreign corporation or organization authorized to do business, and is in good standing (to the extent such concept is recognized in such jurisdiction), in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified or in good standing would not, individually or in the aggregate, have a Company Material Adverse Effect. All of the outstanding shares of capital stock or other equity interests in each of the Company's Subsidiaries have been validly issued, and are fully paid, nonassessable and are owned by the Company or another Subsidiary of the Company free and clear of all pledges, claims, options, liens, charges, encumbrances and security interests of any kind or nature whatsoever (collectively, "Liens"), and are not subject to preemptive rights. Neither the Company nor any Subsidiary has any material investment in any subsidiary or any material investment in any partnership, joint venture or similar entity, except as disclosed in Section 3.4 of the Company Disclosure Schedule, all of which investments are owned free and clear of all Liens.

Section 3.5 Corporate Authority.

(a) The Company has the requisite corporate power and authority to execute and deliver this Agreement and, subject to the approval of the Merger by the Company's shareholders, to consummate the transactions contemplated hereby. The execution and delivery by the Company of this Agreement, and the consummation by the Company of the

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transactions contemplated hereby, have been duly authorized by its Board of Directors and, subject to the approval of the Merger by the Company's shareholders, no other corporate action on the part of the Company is necessary to authorize the execution and delivery by the Company of this Agreement and the consummation by it of the transactions contemplated hereby. This Agreement has been duly executed and delivered by the Company and, assuming this Agreement constitutes the valid and binding agreement of Parent and Merger Sub, constitutes a valid and binding agreement of the Company and is enforceable against the Company in accordance with its terms. The preparation, filing and distribution of the Proxy Statement (as hereinafter defined) to be filed with the SEC has been duly authorized by the Board of Directors of the Company.

(b) Prior to execution and delivery of this Agreement, the Board of Directors of the Company (at a meeting duly called and held) has (i) unanimously approved this Agreement and the Merger and the transactions contemplated hereby and by the Stock Voting Agreement, (ii) determined that the transactions contemplated hereby are in the best interests of the holders of Company Common Stock and (iii) determined to recommend this Agreement, the Merger and the other transactions contemplated hereby to the Company's shareholders for approval and adoption at the shareholders meeting contemplated by Section 6.5(a) hereof. The affirmative vote of the holders of a majority of the shares of Company Common Stock outstanding on the record date for the Company Shareholder Meeting, voting together as a single class, is the only vote of the holders of any class or series of the Company's capital stock necessary to approve the Merger or the transactions contemplated hereby. Neither Article 9, Shareholder Protection Act, nor Article 9A, Control Share Acquisition, of the NCBCA is applicable to the transactions contemplated herein as a result of the Company opting out of such acts pursuant to Sections 8 and 9 of Article IX of the Company's by-laws and in compliance with the provisions of the NCBCA.

Section 3.6 Compliance with Applicable Law. (i) Each of the Company and its Subsidiaries holds or has applied for, and is in compliance with the terms of, all permits, licenses, exemptions, orders and approvals of all Governmental Entities (as hereinafter defined) necessary for the conduct of their respective businesses as currently conducted ("Company Permits"), except for failures to hold or to comply with such Company Permits which would not, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect; (ii) with respect to the Company Permits, no action or

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proceeding is pending or, to the knowledge of the Company, threatened, and, to the knowledge of the Company, no fact exists or event has occurred that would, individually or in the aggregate, reasonably be expected to have a Company Material Adverse Effect; (iii) the business of the Company and its Subsidiaries is being conducted in compliance with all applicable laws, ordinances, regulations, judgments, decrees or orders ("Applicable Law") of any federal, state, local, foreign or multinational court, arbitral tribunal, administrative agency or commission or other governmental or regulatory authority or administrative agency or commission (a "Governmental Entity"), except for violations or failures to so comply that would not, individually, or in the aggregate, have a Company Material Adverse Effect; and (iv) no investigation or review by any Governmental Entity with respect to the Company or its Subsidiaries is pending or, to the knowledge of the Company, threatened, other than, in each case, those which would not, individually, or in the aggregate, have a Company Material Adverse Effect.

Section 3.7 Non-Contravention. Except as set forth in Section 3.7 of the Company Disclosure Schedule, the execution and delivery by the Company of this Agreement do not, and the consummation of the transactions contemplated hereby and compliance with the provisions hereof will not, (i) result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to the loss of a material benefit under any loan, guarantee of indebtedness or credit agreement, note, bond, mortgage, indenture, lease, agreement, contract, instrument, permit, concession, franchise, right or license (any of the foregoing, a "Contract") binding upon the Company or any of its Subsidiaries, or result in the creation of any Lien upon any of the properties or assets of the Company or any of its Subsidiaries, (ii) conflict with or result in any violation of any provision of the Articles of Incorporation or By-Laws or other equivalent organizational document, in each case as amended, of the Company or any of its Subsidiaries, or (iii) conflict with or violate any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Company or any of its Subsidiaries or any of their respective properties or assets, other than, in the case of clauses (i) and (iii), any such violation, conflict, default, right, loss or Lien that, individually or in the aggregate, would not have a Company Material Adverse Effect.

Section 3.8 Government Approvals; Required Consents. No filing or registration with, or authorization, consent or approval of, any Governmental Entity is required by or

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with respect to the Company or any of its Subsidiaries in connection with the execution and delivery of this Agreement by the Company or is necessary for the consummation of the transactions contemplated hereby (including, without limitation, the Merger) except: (i) the filing with the SEC of the Proxy Statement and such reports under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), and any applicable state securities or "blue sky" law as may be required in connection with this Agreement and the transactions contemplated by this Agreement, (ii) the filing of a notification under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), (iii) the filing of Articles of Merger with the Secretary of State of the State of North Carolina, (iv) such consents, approvals, authorizations, permits, filings and notifications listed in Section 3.8 of the Company Disclosure Schedule and (v) such other consents, orders, authorizations, registrations, declarations and filings the failure of which to obtain or make would not, individually or in the aggregate, have a Company Material Adverse Effect.

Section 3.9 SEC Documents and Other Reports.

(a) The Company has filed all documents required to be filed prior to the date hereof by it and its Subsidiaries with the Securities and Exchange Commission (the "SEC") since May 28, 1995 (the "Company SEC Documents"). As of their respective dates, or if amended, as of the date of the last such amendment, the Company SEC Documents complied, and all documents required to be filed by the Company with the SEC after the date hereof and prior to the Effective Time (the "Subsequent Company SEC Documents") will comply, in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the applicable rules and regulations promulgated thereunder and none of the Company SEC Documents contained when filed, and the Subsequent Company SEC Documents will not contain, any untrue statement of a material fact or omitted, or will omit, to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, or are to be made, not misleading. The consolidated financial statements of the Company included in the Company SEC Documents when filed fairly presented, and included in the Subsequent Company

SEC Documents will fairly present, the consolidated financial position of the Company and its consolidated Subsidiaries, as at the respective dates thereof and the consolidated results of their operations and their consolidated cash flows for the respective periods then ended (subject, in the case of the unaudited statements, to normal year-end audit

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adjustments) in conformity with United States generally accepted accounting principles ("GAAP") (except, in the case of the unaudited statements, as permitted by Form 10-Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto). Since May 25, 1997, the Company has not made any change in the accounting practices or policies applied in the preparation of its financial statements, except as may be required by GAAP.

Section 3.10 Absence of Certain Changes or Events. Except as set forth in the Company SEC Documents, since May 25, 1997, the Company and its Subsidiaries have conducted their respective businesses and operations only in the ordinary and usual course consistent with past practice and, except as set forth in Section 3.10 of the Company Disclosure Schedule, there has not occurred (i) any change in the business, assets, prospects, liabilities, financial condition or the results of the Company and the Subsidiaries that would have a Company Material Adverse Effect; (ii) any damage, destruction or loss (whether or not covered by insurance) having a Company Material Adverse Effect; (iii) any declaration, setting aside or payment of any dividend or distribution of any kind by the Company on any class of its capital stock (other than regular quarterly dividends of not more than \$.06 per share of Common Stock); (iv) any material increase in the compensation payable or to become payable by the Company or any Subsidiary to its directors, officers or key employees or any material increase in any bonus, insurance, pension or other employee benefit plan, payment or arrangement made to, for or with such directors, officers or key employees, other than in the ordinary course of business; (v) any labor dispute, other than routine matters none of which has, or would be reasonably expected to have, a Company Material Adverse Effect; (vi) any entry by the Company or the Subsidiaries into any commitment or transaction (including, without limitation, any borrowing or capital expenditure) material (individually or in the aggregate), to the Company or its Subsidiaries other than in the ordinary course of business; (vii) any change by the Company or its Subsidiaries in accounting methods, principles or practices except as required by concurrent changes in GAAP or concurred with by the Company's independent public accountants; (viii) any material agreement, whether in writing or otherwise, to take any action described in this Section 3.10; or (ix) any event during the period from May 25, 1997 through the date of this Agreement that, if taken during the period from the date of this Agreement through the Effective Time, would constitute a breach of Section 5.1 hereof.

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Section 3.11 Actions and Proceedings. Except as set forth in the Company SEC Documents, there are no material outstanding orders, judgments, injunctions, awards or decrees of any Governmental Entity against the Company or any of its Subsidiaries, any of their properties, assets or business, or, to the knowledge of the Company, any of the Company's or its Subsidiaries' current or former directors or officers (during the period served as such) or any other person whom the Company or any of its Subsidiaries has agreed to indemnify, as such. Except as set forth in the Company SEC Documents, there are no material (individually or in the aggregate) actions, suits or legal, administrative, regulatory or arbitration proceedings pending or, to the knowledge of the Company, threatened against the Company or any of its Subsidiaries, any of their properties, assets or business, or, to the knowledge of the Company, any of the Company's or its Subsidiaries' current or former directors or officers or any other person whom the Company or any of its Subsidiaries has agreed to indemnify.

Section 3.12 Absence of Undisclosed Liabilities. Except as set forth in the Company SEC Documents or in Section 3.12 of the Company Disclosure Schedule, and except for liabilities or obligations which are accrued or reserved against on the balance sheet (or reflected in the notes thereto) included in the Company's Annual Report on Form 10-K for the year ended May 25, 1997 (the "Company 10-K"), neither the Company nor any of its Subsidiaries has any material (individually or in the aggregate) liabilities or obligations (including, without limitation, Tax (as hereinafter defined) liabilities) (whether absolute, accrued, contingent or otherwise), other than liabilities or obligations incurred in the ordinary course of business since May 25, 1997 or liabilities under this Agreement.

Section 3.13 Certain Contracts and Arrangements. Except for agreements listed as exhibits to the Company 10-K, or as set forth in Section 3.13 of the

Company Disclosure Schedule, none of the Company or any of its Subsidiaries is a party to any material: (a) employment agreement; (b) collective bargaining agreement; (c) indenture, mortgage, note, installment obligation, agreement or other instrument relating to the borrowing of money in excess of \$5,000,000 by the Company or any Subsidiary or the guaranty of any obligation for the borrowing of money by the Company or any Subsidiary; or (d) agreement (other than contracts for insurance), fixed price sales contract, take or pay arrangement, material lease (i.e., a lease with a remaining term of more than three (3) years and yearly rental payments in excess of \$100,000), or any non-competition agreement or any other agreement or

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obligation which purports to limit in any material respect the manner in which, or the localities in which, the Company or any of its Subsidiaries is entitled to conduct all or any material portion of the business of the Company and its Subsidiaries taken as a whole, which (i) is not terminable by the Company, or a Subsidiary, as applicable, on ninety (90) or fewer days' notice at any time without penalty and involves the receipt or payment by the Company or a subsidiary of more than \$1,000,000, (ii) any joint venture, partnership or similar arrangement extending beyond six (6) months or involving equity or investments of more than \$500,000, or (iii) is otherwise material to the Company or the Subsidiaries taken as a whole. Except as set forth in Section 3.13 of the Company Disclosure Schedule, there is not, under any of the aforesaid obligations, any default or event of default by the Company or other event which (with or without notice, lapse of time or both) would constitute a default or event of default by the Company or any Subsidiary except for defaults or other events which, individually or in the aggregate, would not have a Company Material Adverse Effect.

Section 3.14 Taxes. (i) The Company and each of its Subsidiaries has filed all federal, and all material state, local, foreign and provincial, tax returns, declarations, statements, reports, schedules, bonus and information returns and any amendments to any of the preceding ("Tax Returns") required to have been filed on or prior to the date hereof, or appropriate extensions therefor have been properly obtained, and such Tax Returns are in all material respects true, correct and complete; (ii) all federal, state, local, foreign and provincial taxes, charges, duties, levies, imposts and other assessments of a similar or substitute nature (whether imposed directly or through withholding) including any interest, additions to tax or penalties applicable thereto ("Taxes") shown to be due and payable on such Tax Returns either (x) have been timely paid or (y) extensions for payment have been properly obtained or such Taxes are being timely and properly contested and, in either case, adequate reserves pursuant to GAAP have been established on the Company's consolidated financial statements with respect thereto; (iii) the Company and each of its Subsidiaries have complied in all material respects with all rules and regulations relating to the withholding of Taxes; (iv) neither the Company nor any of its Subsidiaries has waived any statute of limitations in respect of its Taxes or Tax Returns; (v) any Tax Returns of the Company and its Subsidiaries covering periods through the Company's fiscal year ended May, 1995 relating to federal and material state income Taxes have been examined by the Internal Revenue Service ("IRS") or the appropriate taxing authority, and Section 3.14 of the

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Company Disclosure Schedule sets forth all pending audits, examinations or claims by any taxing authority of any Tax Returns; (vi) no issues that have been communicated to the Company in writing by a taxing authority in connection with the examination of any federal or material state Tax Returns of the Company and its Subsidiaries are currently pending and, to the Company's knowledge, no such issues that are, individually or in the aggregate, material to the Company have been raised orally; (vii) all deficiencies asserted or assessments made as a result of any examination of such Tax Returns by any taxing authority have been paid in full or are being timely and properly contested and proper accruals pursuant to GAAP have been established on the Company's consolidated financial statements with respect thereto; (viii) neither the Company nor any of its Subsidiaries has any liability for Taxes of any person other than the Company and its Subsidiaries (a) under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local, foreign or provincial law), (b) as a transferee or successor, or (c) any express or implied agreement or otherwise; (ix) neither the Company nor any of its Subsidiaries have been a member of any affiliated group within the meaning of Section 1504(a) of the Code other than the affiliated group of which the Company is the common parent corporation; (x) none of the property owned or used by the Company or its Subsidiaries is subject to a tax benefit transfer lease executed in accordance with Section 168(f)(8) of the Internal Revenue Code of 1954, as amended by the Economic Recovery Act of 1981; (xi) none of the property owned by the Company or its Subsidiaries is "tax exempt use property" within the meaning of Section 168(h) of the Code; (xii) none of the Company or its Subsidiaries has made any payments, is obligated to

make any payments, or is a party to any agreement that under any circumstances could obligate any of the Company or its Subsidiaries to make any payments that will not be deductible under either Section 162(m) or Section 280G of the Code (or cause the Company or any of its Subsidiaries to incur a payment to reimburse a person for a tax imposed under Code Section 4999); (xiii) each of the Company and its Subsidiaries has disclosed on its U.S. federal income tax return all positions taken therein that could give rise to a substantial understatement of U.S. federal income tax within the meaning of Code Section 6662 other than positions for which there is or was substantial authority; and (xiv) none of the Company or its Subsidiaries is a party to any Tax allocation agreement, any Tax sharing agreement, or any Tax indemnity agreement.

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Section 3.15 Patents, Trademarks and Similar Rights.

- (a) Section 3.15 of the Company Disclosure Schedule contains a true, complete and correct list of:
- (i) All issued patents and all pending applications for patents which the Company or any of its Subsidiaries owns ("Owned Patents");
 - (ii) All agreements, contracts and commitments whether written or oral, pursuant to which the Company or any of its Subsidiaries is licensing from or to one or more third parties the right to use issued patents or pending applications for patents ("Licensed Patent Agreements");
 - (iii) All trademarks, service marks and trade names which are material to the Company's business and currently used by the Company or any of its Subsidiaries other than by virtue of a Licensed Trademark Agreement (defined below), and all registrations and pending applications relating thereto, which the Company or any of its Subsidiaries owns ("Owned Trademarks");
 - (iv) All agreements, contracts and commitments, pursuant to which the Company or any of its Subsidiaries is licensing from or to one or more third parties trademarks, service marks or trade names which are material to the Company's business, or any registrations or pending applications relating thereto ("Licensed Trademark Agreements"), and together with the Licensed Patent Agreements, the "License Agreements"; and

(b) Except as disclosed in Section 3.15 of the Company Disclosure Schedule and except for such exceptions as will not have a Company Material Adverse Effect on any Owned Patent or Owned Trademark or any intellectual property subject to any Licensed Patent Agreement (collectively, the "License Agreements"):

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- (i) Either the Company or one of its Subsidiaries now owns, and shall own as of the Effective Time, all right, title and interest in and to the Owned Patents and Owned Trademarks;
- (ii) All of the Owned Patents and all registrations and pending applications relating to the Owned Trademarks are, and shall be as of the Effective Time, valid and in full force and effect in accordance with their terms;
- (iii) To the best of the Company's knowledge, no impediment exists, nor shall exist as of the Effective Time, to the Company's or its Subsidiary's exclusive ownership, of any of the Owned Trademarks or Owned Patents for use in its business as currently conducted;
- (iv) To the best of the Company's knowledge, no impediment exists, nor shall exist as of the Effective Time, to the Company's or its Subsidiary's use of any of the Owned Patents or Owned Trademarks or any intellectual

property subject to any License Agreement for use in its business as currently conducted;

- (v) None of the Owned Trademarks or Owned Patents and to the knowledge of the Company, none of the intellectual property subject to any License Agreement is involved in, or is the subject of, any pending or, to the knowledge of the Company, threatened infringement, interference, opposition, or similar action, suit or proceeding or has otherwise been challenged in any way.

(c) Except for such exceptions as will not have a Company Material Adverse Effect on any Owned Patent or Owned Trademark or any intellectual property subject to any License Agreement, the License Agreements are valid, binding and enforceable in accordance with their respective terms for the period stated therein, and there is not under any of them any existing default or been a default by the Company, or to the knowledge of the Company, other parties thereto.

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(d) To the Company's knowledge, other than Owned Patents, Owned Trademarks and intellectual property subject to the License Agreements, neither the Company nor any Subsidiary uses or utilizes other issued patents, pending applications for patents, trademarks, service marks and trade names (and all registrations and pending applications relating thereto) except where such use or utilization (or the loss thereof) is not reasonably likely to have a Company Material Adverse Effect, and further, neither the Company nor any of its Subsidiaries is involved, or is the subject of, any pending or, to the knowledge of the Company, threatened infringement, interference, opposition or similar action, suite or proceeding with respect to such use or utilization.

Section 3.16 Information in Disclosure Documents and Registration Statement. None of the information supplied or to be supplied by the Company specifically for inclusion in (i) the Registration Statement on Form S-4 to be filed with the SEC under the Securities Act for the purpose of registering the shares of Parent Common Stock to be issued in connection with the Merger (the "Registration Statement") or (ii) the proxy statement/prospectus to be distributed in connection with the Company's meeting of shareholders to vote upon this Agreement (the "Proxy Statement") will, in the case of the Registration Statement, at the time it becomes effective or, in the case of the Proxy Statement or any amendments thereof or supplements thereto, at the time of the initial mailing of the Proxy Statement and any amendments or supplements thereto, and at the time of the Company Shareholder Meeting (as defined herein) to be held in connection with the Merger, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. As of the date of its initial mailing and as of the date of the Company Shareholder Meeting, the Proxy Statement will comply (with respect to information relating to the Company) as to form in all material respects with the applicable requirements of the Exchange Act, and the rules and regulations promulgated thereunder. Notwithstanding the foregoing, the Company makes no representation or warranty with respect to any statement made or incorporated by reference in the foregoing documents based upon information supplied by or on behalf of Parent or Merger Sub for inclusion or incorporation by reference therein.

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Section 3.17 Employee Benefit Plans; ERISA.

(a) Section 3.17 of the Company Disclosure Schedule sets forth the name of each Company Plan (as defined below) and of each bonus, deferred compensation (together with a list of participants therein), incentive compensation, profit sharing, salary continuation (together with a list of participants therein), employee benefit plan, stock purchase, stock option, employment, severance, termination, golden parachute, consulting or supplemental retirement plan or agreement (collectively, the "Benefit Plans"), true copies of which have heretofore been delivered to Parent. Each Company Plan and Benefit Plan complies in all material respects with the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Code and all other applicable laws and administrative or governmental rules and regulations. No "reportable event" (within the meaning of Section 4043 of ERISA) has occurred with respect to any Company Plan for which the 30-day notice requirement has not been waived (other than with respect to the transactions contemplated by this Agreement); neither the Company nor any of its ERISA Affiliates has withdrawn from any Company Plan under Section 4063 of ERISA or Company Multiemployer Plan (as hereinafter

defined) under Section 4203 or 4205 of ERISA or has taken, or is currently considering taking, any action to do so; and no action has been taken, or is currently being considered, to terminate any Company Plan subject to Title IV of ERISA. Except as set forth in Section 3.17 of the Company Disclosure Schedule, no Company Plan, nor any trust created thereunder, has incurred any "accumulated funding deficiency" (as defined in Section 302 of ERISA), whether or not waived. There are no material (individually or in the aggregate) actions, suits or claims pending or, to the knowledge of the Company, threatened (other than routine claims for benefits) with respect to any Company Plan or Benefit Plan. Neither the Company nor any of its ERISA Affiliates has incurred or would reasonably be expected to incur any material liability under or pursuant to Title IV of ERISA that has not been satisfied in full. To the knowledge of the Company, no non-exempt prohibited transactions described in Section 406 of ERISA or Section 4975 of the Code have occurred. All Company Plans and Benefit Plans that are intended to be qualified under Section 401(a) of the Code have received a favorable determination letter as to such qualification from the Internal Revenue Service, and no event has occurred, either by reason of any action or failure to act, which could be expected to cause the loss of any such qualification, and the Company is not aware of any reason why any Company Plan and Benefit Plan is not so qualified in operation. Neither the Company

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nor any of its ERISA Affiliates knows or has been notified by any Company Multiemployer Plan that such Company Multiemployer Plan is currently in reorganization or insolvency under and within the meaning of Section 4241 or 4245 of ERISA or that such Company Multiemployer Plan intends to terminate or has been terminated under Section 4041A of ERISA. As used herein: (i) "Company Plan" means (x) a "pension plan" (as defined in Section 3(2) of ERISA, other than a Company Multiemployer Plan) or a "welfare plan" (as defined in Section 3(1) of ERISA) established or maintained by the Company or any of its ERISA Affiliates or to which the Company or any of its ERISA Affiliates has contributed in the last six years or otherwise may have any liability; and (ii) "Company Multiemployer Plan" means a "multiemployer plan" (as defined in Section 4001(a)(3) of ERISA) to which the Company or any of its ERISA Affiliates is or has been obligated to contribute or otherwise may have any liability.

(b) (i) No amount payable under any Company Plan will fail to be deductible for federal income tax purposes by virtue of Section 280G of the Code; and (ii) the consummation of the transactions contemplated by this Agreement will not, either alone or in combination with any other event that is reasonably likely to occur, (A) entitle any current or former director, officer or employee of the Company or any of its ERISA Affiliates to severance pay, golden parachute payments, unemployment compensation or any other payment, except as expressly provided in this Agreement, or (B) accelerate the time of payment or vesting, or increase the amount of compensation due any such director, officer or employee.

(c) Except as described in Section 3.17 of the Company Disclosure Schedule, the consummation of the transactions contemplated by this Agreement will not (i) entitle any current or former employee of the Company or any of its Subsidiaries to severance pay, unemployment compensation or any payment contingent upon a change in control or ownership of the Company, or (ii) accelerate the time of payment or vesting, or increase the amount, of any compensation due to any such employee or former employee.

Section 3.18 Environmental Matters. Except as set forth in the Company SEC Documents, (i) no person, entity or governmental agency has asserted against the Company or any of its Subsidiaries any requests, claims or demands for material (individually or in the aggregate) damages, costs, expenses or causes of action arising out of or due to the emission,

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disposal, discharge or other release or threatened release of any Hazardous Substances or Pollutants or Contaminants (in each case, as defined in or governed by any applicable federal, state or local statute, law or regulation) in connection with or related to any past or present facilities, properties or assets, owned, leased or operated by the Company or any of its Subsidiaries (collectively, the "Company's Assets"), arising out of or due to any injury to human health or the environment by reason of the current condition or operation of the Company's Assets, or past conditions and operations or activities on the Company's Assets; (ii) neither the Company nor any Subsidiary is a party to any pending, or to the knowledge of the Company, threatened actions for damages, costs, expenses, demands, causes of action, claims, losses, administrative proceedings, enforcement actions, or investigations relating to the emission, disposal, discharge or release of Hazardous Substances or Pollutants or Contaminants associated with the Company's Assets or operations; (iii) there is no environmental condition, situation or incident on, at or concerning the Company's Assets that could give rise to a material action or liability under

applicable environmental law, rule, ordinance or common law theory relating to Hazardous Substances, Pollutants or Contaminants; and (iv) there is no material liability associated with the Company's Assets under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the Resource Conservation and Recovery Act or the Toxic Substances and Control Act, or any other similar state or local law.

Section 3.19 Labor Matters. Except as set forth in Section 3.17 of the Company Disclosure Schedule, neither the Company nor any of its Subsidiaries has any labor contracts, collective bargaining agreements or material employment or consulting agreements with any persons employed by the Company or any persons otherwise performing services primarily for the Company or any of its Subsidiaries (the "Company Business Personnel"). There is no unfair labor practice complaint pending or, to the knowledge of the Company, threatened, against the Company or any of its Subsidiaries with respect to the Company Business Personnel which, in either such case, would have, individually or in the aggregate, a Company Material Adverse Effect. Since May 25, 1997, there has not been any labor strike, dispute, slowdown or stoppage pending or, to the knowledge of the Company, threatened against the Company or any of its Subsidiaries, and neither the Company nor any of its Subsidiaries has experienced any primary work stoppage or other labor difficulty involving its employees, in either such case, which has had or would reasonably be expected to have, individually or in the aggregate, a Company Material Adverse Effect.

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Section 3.20 Affiliate Transactions. Except as set forth in the Company SEC Documents, there are no material Contracts or other material transactions between the Company or any of its Subsidiaries, on the one hand, and any (i) officer or director of the Company or of any of its Subsidiaries, (ii) record or beneficial owner of five percent or more of any class of the voting securities of the Company or (iii) affiliate (as such term is defined in Rule 12b-2 promulgated under the Exchange Act) of any such officer, director or beneficial owner, on the other hand.

Section 3.21 Opinion of Financial Advisor. The Company has received the written opinion of Interstate/Johnson Lane Corporation ("IJL") to the effect that as of the date of this Agreement, the consideration to be received in the Merger by the holders of Company Common Stock is fair to such holders from a financial point of view. A true, correct and complete copy of the written opinion delivered by IJL, which opinion shall be included in the Proxy Statement, as well as a true and correct copy of the Company's engagement of IJL, have been delivered to Parent by the Company.

Section 3.22 Brokers. Other than HT Capital Advisors, LLC, no broker, finder or financial advisor retained by the Company is entitled to any brokerage, finder's or other fee or commission from the Company in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of the Company. A true and correct copy of the Company's engagement letter with HT Capital Advisors, LLC has been delivered to Parent by the Company.

Section 3.23 Title to Properties. The Company or its Subsidiaries have good and marketable title to all properties and assets reflected on the Company's consolidated financial statements as owned by it or acquired by it after the date thereof (except for properties sold or otherwise disposed of in the ordinary course of business since the date of the Company's most recent consolidated financial statements), free and clear of all title defects and all liens, mortgages, pledges, claims, charges, security interests or other encumbrances of any nature whatsoever except as stated in the Company SEC Documents or which alone or in the aggregate do not materially detract from the value, or materially interfere with the present use, of any material asset or property or of the assets or properties of the Company and its Subsidiaries as a whole or otherwise materially impair the business of the Company and its Subsidiaries as a whole.

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Section 3.24 Pooling. The Company does not know of any reason why the Merger will not qualify as a pooling of interests transaction under APB 16, and neither the Company nor any of its Subsidiaries has, to its knowledge after consultation with its independent accountants, prior to the date of this Agreement taken any action that will prevent the Merger from qualifying as a pooling of interests transaction under APB 16.

Section 3.25 Accounts Receivable. The accounts receivable of the Company and its Subsidiaries reflected in the Company's consolidated financial statements represent in all material respects sales made in the ordinary course

of business and the reserves shown on the Company's consolidated financial statements have been established in accordance with GAAP, consistently applied and are considered by management of the Company to be adequate.

Section 3.26 Inventories. The inventories of the Company and its Subsidiaries consist in all material respects of items suitable and merchantable for filling orders in the ordinary course of business and at normal prices (except to the extent of the inventory reserves shown on the Company's consolidated financial statements, which have been established in accordance with GAAP, consistently applied). To the knowledge of the Company, there are no obsolete, slow moving or otherwise unsalable inventory in excess of such reserves.

Section 3.27 Equity Matters. Except as set forth in Section 3.27 of the Disclosure Schedule, during the past two (2) years (i) the Company has not issued, distributed, purchased, redeemed or otherwise acquired any shares of capital stock of the Company, except issuance of capital stock of the Company in connection with the exercise of outstanding options; (ii) the Company has not issued any options, rights, warrants or other agreements or arrangements relating to the capital stock of the Company or any other instruments convertible into capital stock of the Company; and (iii) the Company has not amended, modified or altered its 1985 Non-Qualified Stock Option Plan or its Restricted Stock Award Plan or any options granted thereunder.

Section 3.28 Disclosure. No representations or warranties by the Company in this Agreement and no statement by the Company or, to the best knowledge of the Company, any other person, contained in any document, certificate or other writing furnished by the Company to Parent in connection with the transactions contemplated in this Agreement,

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contains any untrue statement of material fact or omits any material fact necessary to make the statements herein or therein, in light of the circumstances under which they were made, not misleading.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PARENT AND
MERGER SUB

Except as set forth in the Parent SEC Documents (as defined in Section 4.7), Parent and Merger Sub, jointly and severally, represent and warrant to the Company as follows:

Section 4.1 Organization and Good Standing. Each of Parent and Merger Sub is a corporation duly organized, validly existing and in good standing under the laws of the States of Delaware and North Carolina, respectively, and each has the corporate power and authority to carry on its business as it is now being conducted. Parent is duly qualified as a foreign corporation to do business, and is in good standing (to the extent such concept is recognized), in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary, except where the failure to be so qualified or in good standing would not have a material adverse effect, individually or in the aggregate, on the business, properties, assets, liabilities, condition (financial or otherwise), or results of operations of Parent and its Subsidiaries taken as a whole, or the ability of Parent or Merger Sub to consummate the Merger and the other transactions contemplated by this Agreement (a "Parent Material Adverse Effect").

Section 4.2 Certificate of Incorporation and By-Laws. True, correct and complete copies of the Certificates of Incorporation and By-laws or equivalent organizational documents, each as amended to date, of Parent and Merger Sub have been made available to the Company. The Certificates of Incorporation and By-laws, or equivalent organizational documents, of Parent and each of its Subsidiaries are in full force and effect. Neither Parent nor any of its Subsidiaries is in violation of any provision of its Certificate of Incorporation, By-laws or equivalent organizational documents.

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Section 4.3 Capitalization. (a) The authorized capital stock of Parent consists of (i) 1,200,000,000 shares of Common Stock, par value \$5.00 per share, constituting Parent Common Stock, (ii) 150,000 shares of parent Class B Stock, \$50.00 par value ("Class B Stock"), (iii) 250,000 shares of Parent Class C Preferred Stock, \$100.00 par value ("Class C Stock"), (iv) 1,100,000 shares of Parent Class D Preferred Stock, without par value ("Class D Stock"), and (v) 16,550,000 shares of parent Class E Preferred Stock, without par value ("Class E

Stock"). The Class B Stock, Class C Stock, Class D Stock and Class E Stock, together with Parent Common Stock, is referred to as the "Parent Capital Stock". As of May 1, 1998, (i) 479,642,716 shares of Parent Common Stock were issued and outstanding, and 29,956,969 shares were held in the treasury of Parent. Currently, there are no shares of Class B Stock, Class C Stock, Class D Stock or Class E Stock issued and outstanding. Since May 1, 1998 through the date hereof, Parent has not issued any shares of its capital stock, or any security convertible into or exchangeable for shares of such capital stock, other than the issuance of options and restricted stock pursuant to the plans and arrangements described in the Parent SEC Documents and other than upon the exercise of stock options. The authorized capital stock of Merger Sub consists of 10,000 shares of Common Stock, par value \$1.00 per share, constituting the Merger Sub Common Stock. As of the date hereof, 1,000 shares of Merger Sub Common Stock are issued and outstanding, all of which are owned by Parent, and no shares of Merger Sub Common Stock are held in the treasury of Merger Sub. All of the issued and outstanding shares of Parent Common Stock and Merger Sub Common Stock have been validly issued, and are fully paid and nonassessable, and are not subject to preemptive rights. Each share of Parent Common Stock to be issued in connection with the Merger has been duly authorized and, when so issued, will be fully paid and nonassessable, free and clear of any liens, will not be subject to preemptive rights, and will be freely transferrable except for restrictions on transfer required in order to preserve pooling of interests accounting treatment of the Merger. Without limiting the generality of the foregoing, and subject to the provisions of Rule 145 under the Securities Act, none of the shares of Parent Common Stock to be issued in the Merger will constitute "restricted" securities within the meaning of Rule 144 under the Securities Act of 1933, as amended (the "Securities Act").

(b) As of the date hereof, (i) there are no options, warrants or other agreements, arrangements or commitments of any character to which Parent or Merger Sub or any of their respective Subsidiaries is a party, requiring Parent or Merger Sub to grant,

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issue or sell any shares of the capital stock or other equity interests of Parent; (ii) neither Parent nor any of its Subsidiaries have any obligation, contingent or otherwise, to repurchase, redeem or otherwise acquire any shares of the capital stock or other equity interests of Parent or Merger Sub; and (iii) there are no voting trusts, proxies or other agreements or understandings to or by which Parent or Merger Sub or any of their respective Subsidiaries is a party or is bound with respect to the voting of any shares of capital stock or other equity interests of Parent or Merger Sub. Since May 1, 1998, Parent has not issued any capital stock at less than fair value (subject to the issuance of shares pursuant to outstanding options) and has not granted any options, warrants or other agreements obligating it to issue capital stock other than for fair value and other than the issuance of options and restricted stock pursuant to plans and arrangements described in the Parent SEC Documents.

Section 4.4 Corporate Authority.

(a) Each of Parent and Merger Sub has the requisite corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by Parent and Merger Sub and the consummation by Parent and Merger Sub of the transactions contemplated hereby have been duly authorized by its respective Board of Directors and no other corporate action on the part of Parent or Merger Sub is necessary to authorize the execution and delivery by Parent and Merger Sub of this Agreement and the consummation by it of the transactions contemplated hereby. This Agreement has been duly executed and delivered by Parent and Merger Sub and, assuming this Agreement constitutes the valid and binding agreement of the Company, and constitutes a valid and binding agreement of Parent and Merger Sub and is enforceable against Parent and Merger Sub in accordance with its terms. The preparation of the Registration Statement to be filed with the SEC has been duly authorized by the Board of Directors of Parent.

(b) Prior to the execution and delivery of this Agreement, the Board of Directors of each of Parent and Merger Sub (at a meeting duly called and held) has unanimously approved this Agreement, the Stock Voting Agreement, the Merger and the other transactions contemplated hereby.

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Section 4.5 Non-contravention. The execution and delivery by Parent and Merger Sub of this Agreement do not, and the consummation of the transactions contemplated hereby and compliance with the provisions hereof will not, (i) result in any violation of, or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to the loss of a material benefit under any

Contract binding upon Parent or any of its Subsidiaries, or result in the creation of any Lien upon any of the properties or assets of Parent or any of its Subsidiaries, (ii) conflict with or result in any violation of any provision of the Certificate of Incorporation or By-Laws or other equivalent organizational document, in each case as amended, of Parent or any of its Subsidiaries, or (iii) conflict with or violate any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Parent or any of its Subsidiaries or any of their respective properties or assets, other than, in the case of clauses (i) and (iii), any such violation, conflict, default, right, loss or Lien that, individually or in the aggregate, would not have a Parent Material Adverse Effect.

Section 4.6 Government Approvals; Required Consents. No filing or registration with, or authorization, consent or approval of, any Governmental Entity is required by or with respect to Parent or any of its Subsidiaries in connection with the execution and delivery of this Agreement by Parent or is necessary for the consummation of the transactions contemplated hereby (including, without limitation, the Merger) except: (i) the filing with the SEC of the Registration Statement and such reports under the Exchange Act, and any applicable state securities or "blue sky" law as may be required in connection with this Agreement and the transactions contemplated by this Agreement, (ii) the filing of a notification under the HSR Act, (iii) the filing of Articles of Merger with the Secretary of State of the State of North Carolina, (iv) such consents, approvals, authorizations, permits, filings and notifications listed in Section 4.6 of the Parent Disclosure Schedule and (v) such other consents, orders, authorizations, registrations, declarations and filings the failure of which to obtain or make would not, individually or in the aggregate, have a Parent Material Adverse Effect.

Section 4.7 SEC Documents and Other Reports. Parent has filed all documents required to be filed by it and its Subsidiaries with the SEC since May 25, 1997 (the "Parent SEC Documents"). As of their respective dates, or if amended as of the date of the last such amendment, the Parent SEC Documents complied, and all documents required to be filed by

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Parent with the SEC after the date hereof and prior to the Effective Time ("Subsequent Parent SEC Documents") will comply, in all material respects with the requirements of the Securities Act or the Exchange Act, as the case may be, and the applicable rules and regulations promulgated thereunder and none of the Parent SEC Documents contained when filed, and the Subsequent Parent SEC Documents will not contain, any untrue statement of a material fact or omitted, or will omit, to state any material fact required to be stated therein or necessary to make the statements therein, in light of the circumstances under which they were made, or are to be made, not misleading. The consolidated financial statements of Parent included in the Parent SEC Documents when filed fairly present, and included in the Subsequent Parent SEC Documents will fairly present, the consolidated financial position of Parent and its consolidated Subsidiaries, as at the respective dates thereof and the consolidated results of their operations and their consolidated cash flows for the respective periods then ended (subject, in the case of the unaudited statements, to normal year-end audit adjustments and to any other adjustments described therein) in conformity with GAAP (except, in the case of the unaudited statements as permitted by Form 10-Q of the SEC) applied on a consistent basis during the periods involved (except as may be indicated therein or in the notes thereto). Since May 25, 1997, Parent has not made any change in the accounting practices or policies applied in the preparation of its financial statements, except as may be required by GAAP. Since May 25, 1997 and the date of this Agreement, Parent has not incurred any liabilities or obligations of any nature which, individually or in the aggregate, would have a Parent Material Adverse Effect.

Section 4.8 Absence of Certain Changes or Events. Since May 25, 1997, Parent and its Subsidiaries have conducted their respective businesses and operations in the ordinary and usual course consistent with past practice, except where such failure would not have a Parent Material Adverse Effect, and there has not occurred (i) as of the date hereof, any event, condition or occurrence having or that would have, individually or in the aggregate, a Parent Material Adverse Effect; (ii) any damage, destruction or loss (whether or not covered by insurance) having or which would have, individually or in the aggregate, a Parent Material Adverse Effect; or (iii) any declaration, setting aside or payment of any dividend or distribution of any kind by Parent or Merger Sub on any class of its capital stock.

Section 4.9 Information in Disclosure Documents and Registration Statement. None of the information supplied or to be supplied by Parent or Merger Sub specifically for

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inclusion in (i) the Registration Statement or (ii) the Proxy Statement will, in the case of the Registration Statement, at the time it becomes effective or, in the case of the Proxy Statement or any amendments thereof or supplements thereto, at the time of the initial mailing of the Proxy Statement and any amendments or supplements thereto, and at the time of the meeting of shareholders of the Company to be held in connection with the Merger, contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they are made, not misleading. The Registration Statement, as of its effective date, will comply (with respect to information relating to Parent and Merger Sub) as to form in all material respects with the requirements of the Securities Act, and the rules and regulations promulgated thereunder. Notwithstanding the foregoing, neither Parent nor Merger Sub makes any representation or warranty with respect to any statement made or incorporated by reference in the foregoing documents based upon information supplied by or in behalf of the Company for inclusion or incorporation by reference therein.

Section 4.10 Interim Operations of the Merger Subsidiary. Merger Sub was formed solely for the purpose of engaging in the transactions contemplated hereby, has engaged in no other business activities and has conducted its operations only as contemplated hereby.

Section 4.11 Compliance with Laws. The business of Parent and its Subsidiaries is being conducted in compliance with all Applicable Laws, except for violations or failures to so comply that would not, individually, or in the aggregate, have a Parent Material Adverse Effect, and no investigation or review by any Governmental Entity with respect to the Parent or its Subsidiaries is pending or, to the knowledge of the Parent, threatened, other than, in each case, those which would not, individually, or in the aggregate, have a Parent Material Adverse Effect.

Section 4.12 Finders and Investment Bankers. Neither the Parent, Merger Sub or any other Subsidiary of Parent, nor any of their respective officers or directors has employed any broker, finder or investment banker in connection with the transactions contemplated by this Agreement or has incurred any liability to any third party for any brokerage fees, commissions or finder's fees in connection with the transactions contemplated hereby. Any such fees and expenses shall be the sole responsibility of Parent.

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Section 4.13 Pooling. Parent does not know of any reason why the Merger will not qualify as a pooling of interests transaction under APB Opinion No. 16, and neither the Parent nor any of its Subsidiaries, has, to its knowledge after consultation with its independent accountants, prior to the date of this Agreement taken any action that will prevent the Merger from qualifying as a pooling of interests transaction under APB 16.

ARTICLE V

CONDUCT OF BUSINESS PENDING THE MERGER

Section 5.1 Conduct of Business by the Company Pending the Merger. Prior to the Effective Time, unless Parent shall otherwise agree in writing (which agreement shall not be unreasonably withheld or delayed), or as set forth in Section 5.1 of the Company Disclosure Schedule or as expressly contemplated by this Agreement, the Company shall conduct, and cause each of its Subsidiaries to conduct, its business only in the ordinary and usual course consistent with the manner as heretofore conducted, and the Company shall use, and cause each of its Subsidiaries to use, its reasonable efforts to preserve intact the present business organization, keep available the services of its present officers and key employees, and preserve their existing business relationships. Without limiting the generality of the foregoing, unless Parent shall otherwise agree in writing (which agreement shall not be unreasonably withheld or delayed), or as set forth in Section 5.1 of the Company Disclosure Schedule, prior to the Effective Time the Company shall not, nor shall it permit any of its Subsidiaries to:

(a) (i) amend its Articles of Incorporation, as amended, By-Laws or other organizational documents, (ii) split, combine or reclassify any shares of its outstanding capital stock, (iii) declare, set aside or pay any dividend or other distribution payable in cash, stock or property (other than (i) regular quarterly dividends with record dates and payment dates substantially consistent with past practice of not more than \$.06 per share of Common Stock (it being the express understanding of Parent and the Company that the shareholders of the Company shall be entitled to either a dividend on the Shares or on the shares of Parent Common Stock, but not both, for the quarter in which the Closing shall occur, and the Board of Directors of the Company shall not declare any dividend or fix any record therefor which

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would have such effect)), and (ii) dividend and distributions by a wholly-owned Subsidiary of the Company to its parent entity, or (iv) directly or indirectly redeem or otherwise acquire any shares of its capital stock or shares of the capital stock of any of its Subsidiaries;

(b) authorize for issuance, issue (except upon the exercise of outstanding stock options or warrants) or sell or agree to issue or sell any shares of, or rights to acquire or convertible into any shares of, its capital stock or shares of the capital stock of any of its Subsidiaries (whether through the issuance or granting of options, warrants, commitments, subscriptions, rights to purchase or otherwise);

(c) (i) merge, combine or consolidate with another entity, (ii) acquire or purchase an equity interest in or a substantial portion of the assets of another corporation, partnership or other business organization or otherwise acquire any material assets outside the ordinary course of business and consistent with past practice or otherwise enter into any material contract, commitment or transaction outside the ordinary course of business and consistent with past practice or (iii) sell, lease, license, waive, release, transfer, encumber or otherwise dispose of any of its material assets outside the ordinary course of business and consistent with past practice;

(d) (i) incur, assume or prepay any indebtedness, obligations or liabilities other than in each case in the ordinary course of business and consistent with past practice and other than existing indebtedness of a Subsidiary of the Company, (ii) assume, guarantee, endorse or otherwise become liable or responsible (whether directly, contingently or otherwise) for the obligations of any person other than a Subsidiary of the Company, in each case other than in the ordinary course of business and consistent with past practice and other than existing indebtedness of a Subsidiary of the Company except for (A) short-term borrowings incurred in the ordinary course of business consistent with the manner as heretofore conducted and (B) borrowings pursuant to existing credit facilities in the ordinary course of business or any modifications, renewals or replacements of such credit facilities, or (iii) make any loans, advances or capital contributions to, or investments in, any other person, other than to any Subsidiary of the Company;

(e) pay, satisfy, discharge or settle any material claim, liabilities or obligations (absolute, accrued, contingent or otherwise), other than in the ordinary course

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of business and consistent with past practice or pursuant to mandatory terms of any Company Contract in effect on the date hereof;

(f) modify or amend, or waive any benefit of, any non-competition agreement to which the Company or any of its Subsidiaries is a party;

(g) authorize or make capital expenditures in excess of \$200,000 individually, or in excess of \$1,000,000 in the aggregate except for those projects set forth in Section 5.1 of the Company Disclosure Schedule;

(h) permit any insurance policy naming the Company or any Subsidiary of the Company as a beneficiary or a loss payee to be cancelled or terminated other than in the ordinary course of business;

(i) (i) adopt, enter into, terminate or amend (except as may be required by Applicable Law) any employee plan, agreement, contract, arrangement or other Company Plan for the current or future benefit or welfare of any director, officer or employee, (ii) except in the ordinary course of business consistent with past practice, increase in any manner the compensation or fringe benefits of, or pay any bonus to, any director, officer or employee; or (iii) other than pursuant to Section 2.7 hereof, take any action to fund or in any other way secure, or to accelerate or otherwise remove restrictions with respect to, the payment of compensation or benefits under any employee plan, agreement, contract, arrangement or other Company Plan;

(j) make any material change in its accounting or tax policies or procedures, except as required by Applicable Law or to comply with GAAP; or

(k) enter into any contract, agreement, commitment or arrangement with respect to any of the foregoing.

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ARTICLE VI

ADDITIONAL AGREEMENTS

Section 6.1 Access and Information. Each party hereto shall (and shall cause its Subsidiaries and its and their respective officers, directors, employees, auditors and agents to) afford to the other party and to such other party's officers, employees, financial advisors, legal counsel, accountants, consultants and other representatives (except to the extent not permitted under Applicable Law as advised by counsel) reasonable access during normal business hours throughout the period prior to the Effective Time to all of its books and records and its properties, plants and personnel and, during such period, shall furnish promptly to the other party a copy of each report, schedule and other document filed or received by it pursuant to the requirements of federal securities laws. Unless otherwise required by Applicable Law, each party hereto agrees that it shall, and it shall cause its Subsidiaries and its and their respective officers, directors, employees, auditors and agents to, hold in confidence all non-public information so acquired and to use such information solely for purposes of effecting the transactions contemplated by this Agreement.

Section 6.2 No Solicitation.

(a) Prior to the Effective Time, the Company agrees that it shall not, and it shall use its reasonable best efforts to cause its Subsidiaries and affiliates, and their respective directors, officers, employees, agents or representatives not to, directly or indirectly, (i) solicit or initiate (including by way of furnishing or disclosing non-public information) any inquiries or the making of any proposal with respect to any merger, consolidation or other business combination involving the Company or any Subsidiary of the Company or the acquisition of all or any significant part of the assets or capital stock of the Company or any Subsidiary of the Company (an "Acquisition Transaction") or (ii) negotiate, explore or otherwise engage in discussions with any person (other than Parent and its representatives) with respect to any Acquisition Transaction, or which may reasonably be expected to lead to a proposal for an Acquisition Transaction or enter into any agreement, arrangement or understanding with respect to any such Acquisition Transaction or which would require it to abandon, terminate or fail to consummate the Merger or any other transaction contemplated by this Agreement; provided, however, that, the Company may,

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in response to an unsolicited written proposal from a third party (including a new or unsolicited proposal received by the Company after the execution of this Agreement from a person whose initial contact with the Company may have been solicited by the Company or its representatives prior to the execution of this Agreement) setting forth a Superior Proposal (as hereinafter defined), furnish information to, negotiate or otherwise engage in discussions with such third party, if the Board of Directors of the Company determines in good faith, based upon the advice of outside counsel, that such action is reasonably necessary for the Board of Directors to comply with its legal duties under Applicable Law, including, without limitation the NCBCA.

(b) Except as may be reasonably necessary to comply with the legal duties of the Company's Board of Directors under Applicable Law, including, without limitation, the NCBCA (based on the advice of outside counsel), the Company agrees that, as of the date hereof, it, its Subsidiaries and affiliates, and the respective directors, officers, employees, agents and representatives of the foregoing, shall immediately cease and cause to be terminated any existing activities, discussions and negotiations with any person (other than Parent and its representatives) conducted heretofore with respect to any Acquisition Transaction. The Company agrees to promptly advise Parent of any inquiries or proposals received by, any such information requested from, and any requests for negotiations or discussions sought to be initiated or continued with, the Company, its Subsidiaries or affiliates, or any of the respective directors, officers, employees, agents or representatives of the foregoing, in each case from a person (other than Parent and its representatives) with respect to an Acquisition Transaction. In addition, the Company shall promptly advise Parent of the substance and content of any such inquiry, proposal, information request, negotiations or discussions unless the Board of Directors of the Company determines in good faith and based on written advice of its outside legal counsel that such action would constitute a breach of the Board of Directors legal duties under Applicable Law, including, without limitation, the NCBCA. As used herein, "Superior Proposal" means a bona fide, written and unsolicited proposal or offer (including a new or unsolicited proposal received by the Company after the execution of this Agreement from a person whose initial contact with the Company may have been solicited by the Company or its representatives prior to the execution of this Agreement) made by any person or group (other than Parent or any of its Subsidiaries) with respect to an Acquisition Transaction on terms which the Board of Directors of the Company

determines in good faith, and in the exercise of reasonable

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judgment (based on the advice of independent financial advisors and outside legal counsel), to be superior to the transactions contemplated hereby, taking into consideration all elements of the transactions contemplated hereby including, without limitation, the non-taxable element of said transaction.

(c) Nothing contained in this Section 6.2 or elsewhere in this Agreement shall prohibit the Company from (i) filing with the SEC a report on Form 8-K with respect to this Agreement, including a copy of this Agreement and any related agreements as an exhibit to such report, (ii) taking and disclosing to its shareholders a position contemplated by Rule 14d-9 or 14e-2 promulgated under the Exchange Act, or (iii) making any disclosure to its shareholders if, in the good faith judgment of the Board of Directors of the Company, upon the advice of outside counsel, failure to so disclose would be inconsistent with any Applicable Law or any duty of the Board of Directors. The Company shall be entitled to provide copies of this Section 6.2 to third parties who, on an unsolicited basis after the date of this Agreement, contact the Company regarding an Acquisition Transaction.

Section 6.3 Third-Party Standstill Agreements. During the period from the date of this Agreement through the Effective Time, the Company shall not terminate, amend, modify or waive any provision of any confidentiality or standstill agreement to which it or any of its Subsidiaries is a party that was entered into in contemplation of discussions or negotiations regarding a possible Acquisition Transaction.

Section 6.4 Registration Statement. As promptly as practicable, Parent and the Company shall in consultation with each other prepare and file with the SEC the Proxy Statement and Registration Statement in preliminary form. Each of the Company and Parent shall use its reasonable best efforts to have the Proxy Statement cleared by the SEC and the Registration Statement declared effective as soon as practicable. The Company shall furnish Parent with all information concerning the Company and the holders of its capital stock and shall take such other action Parent may reasonably request in connection with the Registration Statement and the issuance of shares of Parent Common Stock in connection with the Merger. If, at any time prior to the Effective Time, any event or circumstance relating to the Company, any Subsidiary of the Company, Parent or any Subsidiary of Parent, or their respective officers or directors, should be discovered by such party which should be set forth in an amendment or a supplement to the Registration Statement or Proxy

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Statement, such party shall promptly inform the other thereof and take appropriate action in respect thereof.

Section 6.5 Proxy Statements; Shareholder Approval.

(a) The Company, acting through its Board of Directors, shall, subject to and in accordance with Applicable Law, its Articles of Incorporation and its By-Laws, promptly and duly call, give notice of, convene and hold as soon as practicable following the date upon which the Registration Statement becomes effective a meeting of the holders of Company Common Stock for the purpose of voting to approve and adopt this Agreement and the transactions contemplated hereby (the "Company Shareholder Meeting"), and, (i) except as reasonably necessary to comply with the legal duties under Applicable Law, including, without limitation, NCBCA, of the Board of Directors as advised by outside counsel, recommend approval and adoption of this Agreement and the transactions contemplated hereby to the shareholders of the Company and include in the Proxy Statement such recommendation and (ii) except as reasonably necessary to comply with the legal duties under Applicable Laws, including, without limitation, NCBCA, of the Board of Directors as advised by outside counsel, take all reasonable action to solicit and obtain such approval.

(b) The Company shall cause the definitive Proxy Statement to be mailed to its shareholders as soon as practicable following the date on which it is cleared by the SEC and the Registration Statement is declared effective.

Section 6.6 Compliance with the Securities Act. Prior to the Effective Time, the Company shall cause to be prepared and delivered to Parent a list (reasonably satisfactory to counsel for Parent) identifying each person who, at the time of the Company Shareholder Meeting, may be deemed to be an "affiliate" of the Company, as such term is used in paragraphs (c) and (d) of Rule 145 under the Securities Act (the "Company Rule 145 Affiliates"). The Company shall use its reasonable best efforts to cause each person who is identified as a Company Rule 145 Affiliate in such list to deliver to Parent on or prior to the Effective Time a written agreement, substantially in the form of Exhibit "B"

hereto.

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Section 6.7 Reasonable Best Efforts.

(a) Subject to the terms and conditions herein provided and applicable legal requirements, each of the parties hereto agrees to use its reasonable best efforts to take, or cause to be taken, all action, and to do, or cause to be done, and to assist and cooperate with the other parties hereto in doing, as promptly as practicable, all things necessary, proper or advisable under applicable laws and regulations to ensure that the conditions set forth in Article VII are satisfied and to consummate and make effective the transactions contemplated by this Agreement; provided, however, that the Company shall not, without Parent's prior written consent, and Parent shall not be required to, divest or hold separate or otherwise take or commit to take any other similar action with respect to any assets, businesses or product lines of Parent, the Company or any of their respective Subsidiaries.

(b) Each of the parties shall use its reasonable best efforts to obtain as promptly as practicable all consents, waivers, approvals, authorizations or permits of, or registration or filing with or notification to (any of the foregoing being a "Consent"), of any Governmental Entity or any other person required in connection with, and waivers of any violations, defaults or breaches that may be caused by, the consummation of the transactions contemplated by this Agreement.

(c) Each party hereto shall promptly inform the other of any material communication from the SEC, the United States Federal Trade Commission, the United States Department of Justice or any other Governmental Entity regarding any of the transactions contemplated by this Agreement. If any party hereto or any affiliate thereof receives a request for additional information or documentary material from any such Governmental Entity with respect to the transactions contemplated by this Agreement, then such party shall use commercially reasonable efforts to cause to be made, as soon as reasonably practicable and after consultation with the other party, an appropriate response in compliance with such request.

(d) Without limiting the generality of the foregoing and subject to the proviso to Section 6.7(a) hereof, Parent and the Company will use their respective reasonable best efforts to obtain all authorizations or waivers required under the HSR Act to consummate the transactions contemplated hereby, including, without limitation, making all

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filings with the Antitrust Division of the Department of Justice ("DOJ") and the Federal Trade Commission ("FTC") required in connection therewith (the initial filing to occur no later than ten business days following the execution and delivery of this Agreement) and responding as promptly as practicable to all inquiries received from the DOJ or FTC for additional information or documentation. Each of Parent and the Company shall furnish to the other such necessary information and reasonable assistance as the other may request in connection with its preparation of any filing or submission which is necessary under the HSR Act. Parent and the Company shall keep each other apprised of the status of any communications with, and any inquiries or requests for additional information from, the FTC and the DOJ.

(e) The parties hereto intend the Merger to qualify as a reorganization under Section 368(a) of the Code. Each of the parties hereto shall, and shall cause its respective Subsidiaries to, and shall use its reasonable best efforts to cause its respective affiliates to, use its and their respective reasonable best efforts to cause the Merger to so qualify. No party hereto nor any affiliate thereof shall take any action prior to or after the Effective Time that would cause the Merger not to qualify under these Sections of the Code, and the parties hereto shall take the position for all purposes that the Merger qualifies as a reorganization under such Sections of the Code.

Section 6.8 Public Announcements. Parent and the Company shall consult with each other before issuing any press releases or making any public statement with respect to the transactions by this Agreement and shall not issue any such press release or such public statement prior to such consultation and without the approval of the other (which approval shall not unreasonably be withheld), except as may be required by applicable law or obligations pursuant to any listing agreement with any national securities exchange.

Section 6.9 Directors' and Officers' Indemnification and Insurance.

(a) Parent and the Company agree that all rights to indemnification now

existing in favor of any employee, agent, director or officer of the Company and its Subsidiaries (the "Indemnified Parties"), as provided in their respective Articles of Incorporation or By-Laws, shall survive the Merger and shall continue in full force and effect for a period of six (6) years after the Effective Time; provided that in the event any claim

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or claims are asserted or made within such six (6) year period, all rights to indemnification in respect of any such claim shall continue until final disposition of such claim. To the extent any such indemnity requires approval by the Board of Directors of the Surviving Corporation, the Parent shall cause such approval to be provided by such Board of Directors.

(b) The Company may obtain continuation coverage under the Company's existing Directors and Officers and Company Liability Insurance Policy to provide coverage with respect to any claims made during the six (6) years period following the Effective Time for events occurring prior to the Effective Time (the "D&O Insurance") or, if substantially equivalent insurance coverage is unavailable, the best available coverage; provided, however, that the one time premium for the D&O Insurance shall not exceed \$36,000, but if such premium would but for this proviso exceed such amount, the Company may purchase as much coverage as possible for such amount.

(c) In the event the Surviving Corporation or any of its successors or assigns (i) consolidates with or merges into any other person and shall not be the continuing or surviving corporation or entity of such consolidation or merger, or (ii) transfers or conveys all or substantially all of its properties and assets to any person, then, and in each such case, to the extent necessary to effectuate the purposes of this Section 6.9, Parent shall cause proper provision to be made so that the successors and assigns of the Surviving Corporation assume the obligations set forth in this Section 6.9 and none of the actions described in clauses (i) or (ii) shall be taken until such provision is made.

(d) The provisions of this Section 6.9 are intended to be for the benefit of, and shall be enforceable by, each such covered insured, and such covered insured's heirs and personal representatives and shall be binding on all successors and assigns of the Company.

Section 6.10 Expenses. Except as otherwise set forth in Sections 8.2(b) and (c), each party hereto shall bear its own costs and expenses in connection with this Agreement and the transactions contemplated hereby, except that expenses incurred in connection with printing and mailing the Proxy Statement and Registration Statement shall be shared equally by Parent and the Company.

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Section 6.11 Listing Application. Parent shall each use its reasonable best efforts to cause the shares of Parent Common Stock to be issued pursuant to this Agreement in the Merger to be listed for trading on the New York Stock Exchange or on any securities exchange on which shares of Parent Common Stock shall be listed at the Effective Time.

Section 6.12 Supplemental Disclosure. The Company shall give prompt notice to Parent, and Parent shall give prompt notice to the Company, of (i) the occurrence, or non-occurrence, of any event the occurrence, or nonoccurrence, of which would be likely to cause (x) any representation or warranty contained in this Agreement to be untrue or inaccurate or (y) any covenant, condition or agreement contained in this Agreement not to be complied with or satisfied and (ii) any failure of the Company or Parent, as the case may be, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder; provided, however, that the delivery of any notice pursuant to this Section 6.12 shall not have any effect for the purpose of determining the satisfaction of the conditions set forth in Article VII of this Agreement or otherwise limit or affect the remedies available hereunder to any party.

Section 6.13 Pooling of Interests. Each of the Company and Parent will use reasonable efforts to cause the transactions contemplated by this Agreement, including the Merger, to be accounted for as a pooling of interests under Opinion 16 of the Accounting Principles Board and applicable SEC rules and regulations, and such accounting treatment to be accepted by each of the Company's and Parent's independent public accountants, and by the SEC, respectively, and each of the Company and Parent agrees that it will not voluntarily take any action that would cause such accounting treatment not to be obtained.

Section 6.14 Employee Matters. If, at any time during the two (2) year period following the Effective Time, any employee benefit plan applicable to

employees of the Company is merged or combined with an employee benefit plan of Parent's Golden Valley Microwave subsidiary (or any successor thereto), Parent shall cause such subsidiary to credit such employees' service with the Company or its subsidiaries, to the same extent as such service was credited under the merged or combined plan of the Company immediately prior to such merger or combination for purposes of determining eligibility to participate in and vesting under, and for purposes of calculating benefits under such employee benefit plan. Furthermore, for the two (2) year period following the Effective Time, the employee benefits

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applicable to employees of the Company shall, in the aggregate, be no less favorable to such employees than such employees current benefits.

ARTICLE VII

CONDITIONS TO CONSUMMATION OF THE MERGER

Section 7.1 Conditions to Each Party's Obligation to Effect the Merger. The respective obligations of each party to effect the Merger shall be subject to the satisfaction or waiver at or prior to the Closing Date of the following conditions:

(a) Shareholder Approval. This Agreement and the transactions contemplated hereby shall have been approved and adopted by the requisite vote (as described in Section 3.5(b)) of the Company in accordance with Applicable Law.

(b) Governmental Approvals. All authorizations, consents, orders, declarations or approvals of, or filings with, or terminations or expirations of waiting periods imposed by, any Governmental Entity, which the failure to obtain, make or occur would have the effect of making the Merger or any of the transactions contemplated hereby illegal or would have a Material Adverse Effect on Parent or the Company (as the Surviving Corporation) or would materially impair the operations of the Surviving Corporation, assuming the Merger had taken place, shall have been obtained, shall have been made or shall have occurred.

(c) HSR Act. The waiting period under the HSR Act shall have expired or been terminated.

(d) Registration Statement. The Registration Statement shall have become effective in accordance with the provisions of the Securities Act. No stop order suspending the effectiveness of the Registration Statement shall have been issued by the SEC and no proceedings for that purpose shall have been initiated by the SEC.

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(e) No Injunction. No Governmental Entity having jurisdiction over the Company or Parent, or any of their respective Subsidiaries, shall have enacted, issued, promulgated, enforced or entered any law, rule, regulation, executive order, decree, injunction or other order (whether temporary, preliminary or permanent, collectively, the "Restraints") which is then in effect and has the effect of making the Merger or the Stock Voting Agreement illegal or otherwise prohibiting consummation of the Merger; provided, however, that each of the parties hereto shall have used their respective reasonable efforts to prevent the entry of any such Restraints and to appeal as promptly as possible any such Restraints that may be entered.

(f) NYSE. The Parent Company Stock to be issued in connection with the Merger shall have been approved for listing on the NYSE, subject to official notice of issuance.

Section 7.2 Conditions to Obligation of Parent and Merger Sub to Effect the Merger. The obligation of Parent and Merger Sub to effect the Merger shall be subject to the satisfaction at or prior to the Effective Time of the following additional conditions, unless waived in writing by Parent:

(a) Representations and Warranties. The representations and warranties of the Company that are qualified with reference to materiality shall be true and correct, and the representations and warranties that are not so qualified shall be true and correct in all material respects, in each case as of the date hereof, and, except to the extent such representations and warranties speak as of an earlier date, as of the Effective Time as though made at and as of the Effective Time, and Parent shall have received a certificate signed on behalf of the Company by the Chief Executive Officer or the Chief Financial Officer of the

Company to such effect (it being understood that, for purposes of determining the accuracy of such representations and warranties as of the Effective Time, any inaccuracy resulting from events occurring from the date hereof through the Effective Time that do not have a Company Material Adverse Effect shall be disregarded).

(b) Performance of Obligations of the Company. The Company shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Effective Time, and Parent shall have received a certificate

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signed on behalf of the Company by the Chief Executive Officer or the Chief Financial Officer of the Company to such effect.

(c) Material Adverse Change. Since the date of this Agreement, there shall have been no event or occurrence which has had a Company Material Adverse Effect, and Parent shall have received a certificate signed on behalf of the Company by the Chief Executive Officer or the Chief Financial Officer of the Company to such effect.

(d) Company Affiliate Agreements. Parent shall have received the written agreements, substantially in the form of Exhibit "B" hereto, from the Company Rule 145 Affiliates described in Section 6.6.

(e) Consents Under Agreements. The Company shall have obtained the consent or approval of each person (other than the Governmental Entities referred to in Section 7.1(b)) whose consent or approval shall be required in connection with the transactions contemplated hereby under any indenture, mortgage, evidence of indebtedness, lease or other agreement or instrument, except where the failure to obtain the same would not reasonably be expected, individually or in the aggregate, to have a Parent Material Adverse Effect or Company Material Adverse Effect (as the Surviving Corporation).

(f) Tax Matters. Parent shall have received assurances satisfactory to it that the Merger will qualify as a reorganization within the meaning of Section 368 of the Code.

(g) Pooling. Parent shall have received assurances reasonably satisfactory to it that the transactions contemplated herein qualify for treatment as a pooling of interests pursuant to APB 16.

(h) Dissenters. The number of Shares dissenting from the Merger pursuant to the NCBCA shall not preclude accounting for the Merger as a pooling of interests pursuant to APB 16.

Section 7.3 Conditions to Obligation of the Company to Effect the Merger. The obligation of the Company to effect the Merger shall be subject to the satisfaction at or prior

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to the Effective Time of the following additional conditions, unless waived in writing by the Company:

(a) Representations and Warranties. The representations and warranties of Parent and Merger Sub that are qualified with reference to materiality shall be true and correct, and the representations and warranties that are not so qualified shall be true and correct in all material respects, in each case as of the date hereof, and, except to the extent such representations and warranties speak as of an earlier date, as of the Effective Time as though made on and as of the Effective Time, and the Company shall have received a certificate signed on behalf of Parent by the Chief Financial Officers of Parent to such effect (it being understood that, for purposes of determining the accuracy of such representations and warranties as of the Effective Time, any inaccuracy resulting from events occurring from the date hereof through the Effective Time that do not have a Parent Material Adverse Effect shall be disregarded).

(b) Performance of Obligations of Parent and Merger Sub. Each of Parent and Merger Sub shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Effective Time, and the Company shall have received a certificate signed on behalf of Parent by the Chief Financial Officer of Parent to such effect.

(c) Tax Opinion. The Company shall have received an opinion of Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan, LLP ("Smith Anderson"), counsel to the Company, to the effect that the Merger will qualify as a reorganization within the meaning of Section 368 of the Code. The issuance of such opinion shall be conditioned on the receipt by such tax counsel of representation

letters from each of Parent and Merger Sub, the Company and certain shareholders of the Company, including, but not limited to, Ron E. Doggett, in each case, in form and substance reasonably satisfactory to Smith Anderson. The specific provisions of each such representation letter shall be in form and substance reasonably satisfactory to such tax counsel, and each such representation letter shall be dated on or before the date of such opinion and shall not have been withdrawn or modified in any material respect.

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ARTICLE VIII

TERMINATION

Section 8.1 Termination. This Agreement may be terminated, and the Merger and the other transactions contemplated hereby may be abandoned, at any time prior to the Effective Time, whether before or after approval by the shareholders of the Company or Parent:

(a) by mutual written consent of Parent and the Company;

(b) by either Parent or the Company, if (i) the Merger shall not have been consummated on or before December 31, 1998, or (ii) the shareholders of the Company do not approve this Agreement by the requisite vote at a meeting duly convened therefor or any adjournment thereof;

(c) by either Parent or the Company, if any permanent injunction, order, decree or ruling by any Governmental Entity of competent jurisdiction preventing the consummation of the Merger shall have become final and nonappealable; provided, however, subject to the proviso to Section 6.7(a) hereof, that the party seeking to terminate this Agreement pursuant to this Section 8.1(c) shall have used reasonable best efforts to remove such injunction or overturn such action;

(d) by Parent, if (i) the number of Shares dissenting from the Merger precludes accounting for the Merger as a pooling of interests pursuant to APB Opinion No. 16, (ii) there has been a material breach of the representations or warranties, covenants or agreements of the Company set forth in this Agreement, which breach is not curable or, if curable, is not cured within thirty (30) days after written notice of such breach is given by Parent to the Company, or (iii) the Board of Directors of the Company (x) fails to convene a meeting of the Company's shareholders to approve the Merger on or before 150 days following the date hereof (the "Meeting Date"), or postpones the date scheduled for the meeting of the shareholders of the Company to approve this Agreement beyond the Meeting Date, except with the written consent of Parent, (y) fails to recommend the approval of this Agreement and the Merger to the Company's shareholders in accordance with Section 6.5(a)

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hereof, or (z) withdraws or amends or modifies in a manner adverse to Parent its recommendation or approval in respect of this Agreement or the Merger or fails to reconfirm such recommendation within two business days of a written request for such confirmation by Parent;

(e) by the Company if the Board of Directors of the Company shall reasonably determine that a proposal for an Acquisition Transaction constitutes a Superior Proposal; provided, however, that the Company may not terminate this Agreement pursuant to this subsection (e) unless (i) five business days shall have elapsed after delivery to Parent of a written notice of such determination by such Board of Directors and, during such five business day period, the Company shall have informed Parent of the terms and conditions of such proposal for an Acquisition Transaction and the identity of the person or group making such proposal for an Acquisition Transaction, and (ii) at the end of such five business day period, the Board of Directors believe that such proposal for Superior Proposal is superior to the transaction contemplated under this Agreement; and

(f) by the Company, if there has been a breach of any of the representations or warranties, covenants or agreements of Parent or Merger Sub set forth in this Agreement of such a magnitude that the closing conditions cannot be satisfied, which breach is not curable or, if curable, is not cured within 30 days after written notice of such breach is given by the Company to Parent.

Section 8.2 Effect of Termination.

(a) In the event of termination of this Agreement pursuant to this

Article VIII, the Merger shall be deemed abandoned and this Agreement shall forthwith become void, except that the provisions of the last sentence of Section 6.1, Section 6.8, Section 6.10 and this Section 8.2 shall survive any termination of this Agreement; provided, however, that, except as otherwise provided in this Section 8.2, nothing in this Agreement shall relieve any party from liability for any breach of this Agreement.

(b) If (A) Parent shall have terminated this Agreement pursuant to Section 8.1(d)(iii) (x) or (y), or (B) the Company shall have terminated this Agreement pursuant to Section 8.1(e), then, in any such case, the Company shall pay Parent within one

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(1) business day following such termination, a termination fee of \$9.4 million, payable by wire transfer of immediately available funds to an account designated by Parent.

(c) If Parent or Company shall have terminated this Agreement pursuant to Section 8.1(b)(ii) or if Parent shall have terminated this Agreement pursuant to Section 8.1(d)(i), Section 8.1(d)(iii)(z), or as a result of the Company's breach of Section 6.13 and either before such termination or within twelve (12) months after the date of such termination (A) the Company (i) consummates an Acquisition Transaction, or (ii) enters into a Definitive Agreement to do so (or a tender offer or similar transaction with respect thereto is commenced), and (B) such Acquisition Transaction or tender offer proposes consideration to the shareholders of the Company of \$24 per share or more (which amount is subject to adjustment based on stock dividends, subdivisions, reclassification, recapitalization, split, combination, exchange or issuance of shares or similar transactions occurring prior thereto), then, in any such case, the Company shall pay Parent, within one (1) business day following consummation of any Acquisition Transaction, a termination fee of \$9.4 million payable by wire transfer of immediately available funds to an account designated by Parent.

(d) In the event the transactions contemplated hereunder are terminated for any reason not specified in Sections 8.2(b) or 8.2(c) and other than pursuant to Section 8.1(f), the Company shall reimburse Parent its actual expenses incurred in connection with the transactions contemplated by this Agreement (including, without limitation, attorney's fees and fees of financial advisors) in an amount up to \$500,000, such payment to be made by wire transfer of immediately available funds to an account designated by Parent.

(e) If the Company shall have terminated this Agreement pursuant to Section 8.1(f), Parent shall reimburse the Company its actual expenses incurred in connection with the transactions contemplated by this Agreement (including, without limitation, attorney's fees and fees of financial advisors) in an amount up to \$500,000, such payment to be made by wire transfer of immediately available funds to an account designated by the Company.

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ARTICLE IX

GENERAL PROVISIONS

Section 9.1 Amendment and Modification. At any time prior to the Effective Time, this Agreement may be amended, modified or supplemented only by written agreement (referring specifically to this Agreement) of Parent and the Company with respect to any of the terms contained herein; provided, however, that after any approval and adoption of this Agreement by the shareholders of the Company, no such amendment, modification or supplementation shall be made which under Applicable Law requires the approval of such shareholders, without the further approval of such shareholders.

Section 9.2 Waiver. At any time prior to the Effective Time, Parent, on the one hand, and the Company, on the other hand, may (i) extend the time for the performance of any of the obligations or other acts of the other, (ii) waive any inaccuracies in the representations and warranties of the other contained herein or in any documents delivered pursuant hereto and (iii) subject to the provisions of Section 9.1, waive compliance by the other with any of the agreements or conditions contained herein which may legally be waived. Any such extension or waiver shall be valid only if set forth in an instrument in writing specifically referring to this Agreement and signed on behalf of such party. The failure of any party to this Agreement to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of such rights.

Section 9.3 Survivability; Investigations. The respective representations and warranties of Parent and Merger Sub, on the one hand, and

the Company, on the other hand, contained herein or in any certificates or other documents delivered prior to or as of the Effective Time (i) shall not be deemed waived or otherwise affected by any investigation made by any party hereto and (ii) shall not survive beyond the Effective Time. The covenants and agreements of the parties hereto (including the Surviving Corporation after the Merger) shall survive the Effective Time, without limitation (except for those which, by their terms, contemplate a shorter survival period).

Section 9.4 Notices. All notices and other communications hereunder shall be in writing and shall be delivered personally or by next-day courier or telecopied with

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confirmation of receipt, to the parties at the addresses specified below (or at such other address for a party as shall be specified by like notice; provided that notices of a change of address shall be effective only upon receipt thereof). Any such notice shall be effective upon receipt, if personally delivered or telecopied, or one day after delivery to a courier for next-day delivery.

If to Parent or Merger Sub, to:

ConAgra, Inc.
One ConAgra Drive
Omaha, Nebraska, 68102-5001
Attention: Senior Vice President/Controller
Telephone: (402) 595-4349
Telecopier: (402) 595-4611

with copies to:

McGrath, North, Mullin & Kratz, P.C.
1400 One Central Park Plaza
222 South Fifteenth Street
Omaha, Nebraska, 68102
Attention: Roger W. Wells, Esq.
Telephone: (402) 341-3070
Telecopier: (402) 341-0216

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If to the Company, to:

GoodMark Foods, Inc.
6131 Falls of Neuse Road
Raleigh, North Carolina, 27609
Attention: Mr. Ron E. Doggett
Telephone: (919) 790-9940
Telecopier: (919) 790-6535

with a copy to:

Smith, Anderson, Blount, Dorsett, Mitchell &
Jernigan, L.L.P.
2500 First Union Capitol Center
150 Fayetteville Street Mall
Raleigh, NC 27601
Attention: Henry A. Mitchell, Jr.
Telephone: (919) 821-1220
Telecopier: (919) 821-6800

Section 9.5 Descriptive Headings; Interpretation. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. References in this Agreement to Sections, Exhibits or Articles mean a Section, Exhibit or Article of this Agreement unless otherwise indicated. References to this Agreement shall be deemed to include the Exhibits hereto, the Company Disclosure Schedule and the Parent Disclosure Schedule, unless the context otherwise requires. The term "person" shall mean and include an individual, a partnership, a limited liability company, a joint venture, a corporation, a trust, a Governmental Entity or an unincorporated organization.

Section 9.6 Entire Agreement. This Agreement (including the Exhibits, the Company Disclosure Schedule, the Parent Disclosure Schedule, the Stock Voting Agreement and the Confidentiality Agreement between the parties) constitutes the entire agreement and supersedes all other prior agreements and

understandings, both written and oral, among the parties or any of them, with respect to the subject matter hereof and except for Article II and

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Sections 6.9 and 6.13, are not intended to confer upon any person other than the parties hereto any rights or remedies.

Section 9.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina, without giving effect to the provisions thereof relating to conflicts of law.

Section 9.8 Enforcement. The parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in any court of the United States located in the State of North Carolina or in North Carolina state court, this being in addition to any other remedy to which they are entitled at law or in equity. In addition, each of the parties hereto (a) consents to submit itself to the personal jurisdiction of any federal court located in the State of North Carolina or any North Carolina state court in the event any dispute arises out of this Agreement or any of the transactions contemplated by this Agreement, (b) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from any such court and (c) agrees that it will not bring any action relating to this Agreement or any of the transactions contemplated by this Agreement in any court other than a federal or state court sitting in the State of North Carolina.

Section 9.9 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

Section 9.10 Assignment; Third-Party Beneficiaries. This Agreement and the rights, interests and obligations hereunder shall be binding upon, inure to the benefit of and be enforceable by the parties hereto and their respective successors and permitted assigns; provided, however, that no party hereto may assign or otherwise transfer its rights, interests or obligations hereunder without the prior written consent of the other parties hereto. Except for Article II and Sections 6.9 and 6.13, nothing in this Agreement is intended to confer upon any person other than the parties hereto any rights or remedies hereunder.

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IN WITNESS WHEREFORE, Parent, Merger Sub and the Company have caused this Agreement and Plan of Merger to be executed on its behalf by their respective officers thereunto duly authorized, all as of the date first above written.

CONAGRA, INC.

By: /s/ Bruce Rohde
Its: President and Chief Executive Officer

CAG 40, INC.

By: /s/ Dwight J. Goslee
Its: Vice President

GOODMARK FOODS, INC.

By: /s/ Ron E. Doggett
Its: Chairman and CEO

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Delaware

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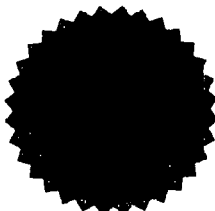
The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF OWNERSHIP, WHICH MERGES:

"GOODMARK FOODS, INC.", A NORTH CAROLINA CORPORATION,
WITH AND INTO "CONAGRA FOODS, INC." UNDER THE NAME OF
"CONAGRA FOODS, INC.", A CORPORATION ORGANIZED AND EXISTING
UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED
IN THIS OFFICE THE TWENTY-THIRD DAY OF DECEMBER, A.D. 2002, AT
4:01 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF
THE AFORESAID CERTIFICATE OF OWNERSHIP IS THE THIRTY-FIRST DAY
OF DECEMBER, A.D. 2002, AT 11:59 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE
NEW CASTLE COUNTY RECORDER OF DEEDS.



Harriet Smith Windsor
Harriet Smith Windsor, Secretary of State

0818944 8100M

AUTHENTICATION: 2168616

020794369

DATE: 12-24-02

CERTIFICATE OF OWNERSHIP AND MERGER

MERGING

GOODMARK FOODS, INC.
(A North Carolina Corporation)

INTO

CONAGRA FOODS, INC.
(A Delaware Corporation)

STATE OF DELAWARE
SECRETARY OF STATE
DIVISION OF CORPORATIONS
FILED 04:01 PM 12/23/2002
020794369 - 0818944

It is hereby certified that:

1. **CONAGRA FOODS, INC.** (hereinafter sometimes referred to as the "Corporation") is a business corporation of the State of Delaware.

2. The Corporation is the owner of all of the outstanding shares of each class of stock of **GOODMARK FOODS, INC.**, which is a business corporation of the State of North Carolina.

3. The laws of the jurisdiction of organization of **GOODMARK FOODS, INC.** permit the merger of a business corporation of that jurisdiction with a business corporation of another jurisdiction.

4. The Corporation hereby merges **GOODMARK FOODS, INC.** into the Corporation.

5. Set forth below is a copy of the resolution adopted on December 18, 2002, by the Board of Directors of the Corporation to merge the said **GOODMARK FOODS, INC.** into the Corporation:

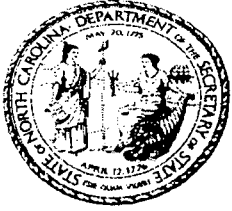
"**RESOLVED**, that Goodmark Foods, Inc., a wholly owned subsidiary of ConAgra Foods, Inc., be merged with and into ConAgra Foods, Inc. in accordance with the Delaware Corporation Law and other applicable state law. The issued shares of Goodmark Foods, Inc. shall not be converted in any manner, but each said share which is issued as of the effective date of the merger shall be surrendered and extinguished. The merger shall be effective as of 11:59 p.m. Central time on December 31, 2002."

6. This Certificate of Ownership and Merger shall be effective as of 11:59 p.m. Central time on December 31, 2002.

DATED: December 18, 2002.

CONAGRA FOODS, INC.


Debra Keith, Vice President, Tax



NORTH CAROLINA

Department of The Secretary of State

To all whom these presents shall come, Greetings:

I, **ELAINE F. MARSHALL**, Secretary of State of the State of North Carolina, do hereby certify the following and hereto attached to be a true copy of

ARTICLES OF MERGER

OF

GOODMARK FOODS, INC.

INTO

CONAGRA FOODS, INC.

the original of which was filed in this office on the 27th day of December, 2002.



IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at the City of Raleigh, this 27th day of December, 2002

Elaine F. Marshall
Secretary of State

Date Filed: 12/27/2002 8:54:00 AM

Effective: 12/31/2002

Elaine F. Marshall

North Carolina Secretary of State

State of North Carolina

Department of the Secretary of State

22 361 9055

ARTICLES OF MERGER

FOREIGN AND DOMESTIC BUSINESS CORPORATION

Pursuant to Sections 55-11-05 and 55-11-07 of the General Statutes of North Carolina, the undersigned corporation does hereby submit the following Articles of Merger as the surviving corporation in a merger between a domestic business corporation and one or more foreign business corporations.

1. The name of the surviving corporation is Comagra Foods, Inc.
a corporation organized under the laws of Delaware; the name of the merged corporation is Goodmark Foods, Inc., a corporation organized under the laws of North Carolina
2. Attached is a copy of the Plan of Merger that was duly approved in the manner prescribed by law by each of the corporations participating in the merger.
3. With respect to the surviving corporation (check either a or b, as applicable):
a. ☒ Shareholder approval was not required for the merger.
b. ☐ Shareholder approval was required for the merger and the plan of merger was approved by the shareholders as required by Chapter 55 of the North Carolina General Statutes.
4. With respect to the merged corporation (check either a or b, as applicable):
a. ☒ Shareholder approval was not required for the merger.
b. ☐ Shareholder approval was required for the merger, and the plan of merger was approved by the shareholders as required by Chapter 55 of the North Carolina General Statutes.
5. The merger is permitted by the law of the state or country of incorporation or organization of each foreign entity which is a party.
6. Each foreign entity which is a party has complied or shall comply with the applicable laws of its state or country of incorporation or organization.
7. (Complete only if applicable - see instructions.) The mailing address of the surviving foreign corporation is: _____ The surviving foreign corporation will file a statement of any subsequent change in its mailing address with the North Carolina Secretary of State.
8. These articles will be effective upon filing, unless a delayed date and/or time is specified: 11:59 p.m. CST 12/31/02

This is the 18th day of December, 20 02

Conagra Foods, Inc.

Names of Corporation

Debra A. Kitch

Signature

Debra Keith, Vice President, Tax

Type or Print Name and Title

CORPORATIONS DIVISION
(Revised January, 2002)

P. O. BOX 29622

RALEIGH, NC 27626-0622

Form B-12

PLAN OF MERGER

Goodmark Foods, Inc. is a wholly owned subsidiary of ConAgra Foods, Inc. and shall be merged with and into ConAgra Foods, Inc. in accordance with the Delaware Corporation Law and other applicable state law. The issued shares of Goodmark Foods, Inc. shall not be converted in any manner, but each said share which is issued as of the effective date of the merger shall be surrendered and extinguished. The merger shall be effective as of 11:59 p.m. Central time on December 31, 2002.